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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 735 [redacted] 10

ISAAC J. COLLINS,

Appellant,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

STATEMENT AS TO JURISDICTION.

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FRED E. FULLER,
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Of Counsel.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION

Civil Action No. 4426

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

HARTFORD-EMPIRE COMPANY, ET AL,
Defendants.

STATEMENT AS TO JURISDICTION ON BEHALF OF ISAAC J. COLLINS.

In compliance with Rule 12 of the Supreme Court of the United States, Isaac J. Collins, one of the defendants in the above entitled cause, files this Statement showing the basis on which the Supreme Court has jurisdiction on appeal to review the Final Judgment entered herein:

Judgment and Appeal.

The final Judgment of the District Court herein sought to be reviewed was entered October 8, 1942.

A petition for Allowance of Appeal was filed on December 7, 1942, and is presented to the District Court herewith December 7, 1942.

Jurisdiction.

The statutory jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment en-

tered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903 (32 Stat. 823) as amended by the Act of March 3, 1911 (36 Stat. 1167; U. S. Code, Title 15, Section 29) and by Section 238 of the Judicial Code as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938; U. S. Code, Title 28, Section 345).

Among the decisions believed to sustain the jurisdiction of this appeal by the Supreme Court of the United States are *United Shoe Machinery Co.* v. *United States,* 258 U. S. 451; *Terminal Railroad Association* v. *United States,* 266 U. S. 17, 28; *Swift & Co.* v. *United States,* 276 U. S. 311; *United States* v. *California Canneries,* 279 U. S. 553, 558; *Atlantic Cleaners and Dyers, Inc.* v. *United States,* 286 U. S. 427; *International Business Machines Corp.* v. *United States,* 298 U. S. 131; *Sugar Institute* v. *United States,* 297 U. S. 553; *Ethyl Gasoline Corp.* v. *United States,* 309 U. S. 436; *Missouri-Kansas Pipe Line Co.* v. *United States,* 312 U. S. 502; *United States* v. *Masonite Corporation,* 316 U. S. 265; *United States* v. *Univis Lens Co.,* 316 U. S. 241; *Chrysler Corporation* v. *United States,* 316 U. S. 556.

Statutes.

The Sherman Act of July 2, 1890, Sections 1, 2 and 4 (Act of July 2, 1890, c. 647, Secs. 1, 2 and 4, 26 Stat. 209, as amended by 36 Stat. 1167 and 50 Stat. 693, 15 U. S. C. Secs. 1, 2 and 4):

> "Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any such contract or engage in any such combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not

exceeding one year, or by both said punishments, in the discretion of the court."

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"Sec. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

The Clayton Act of October 15, 1914, Sections 3 and 15 (Act of October 15, 1914, c. 323, Secs. 3 and 15, 38 Stat. 731 and 736, 15 U. S. C. Secs. 14 and 25):

"Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction

of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

"Sec. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof."

Nature of Case and Ruling Below.

The complaint in this case was filed on December 11, 1939.

Bills of particulars were filed by plaintiff in response to the motions of various of the defendants, and answers were

filed by all the defendants, and supplemental answers were filed by some of them.

The complaint, as supplemented by the bills of particulars, charged and alleged in general that over a period of years there had been established and maintained by and between certain of the defendants in violation of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act, a "principal" conspiracy, monopoly and combination in restraint of trade with respect to (1) patents covering automatic machinery for the production of pressed and blown glassware and glass containers, and (2) the manufacture and distribution of automatic machinery for the production of pressed and blown glassware and glass containers; and that incidental to said "principal" conspiracy, monopoly and combination, certain "incidental" conspiracies, monopolies and combinations were from time to time established and effectuated in violation of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act through the control over said patents on automatic machinery for the production of pressed and blown glassware and glass containers, and through the control of the manufacture and distribution of said automatic machinery for the production of pressed and blown glassware and glass containers, and that the various defendants from time to time either directly joined or became connected with, a member of and a participant in said "principal" conspiracy, monopoly and combination, as above described, or through the "incidental" conspiracies, monopolies and combinations above referred to.

The defendants included the Hartford-Empire Company, the owner and licensor of numerous patents on, and the lessor of, automatic machinery for the manufacture of pressed and blown glassware and glass containers, and also included several other corporations owning patents on, and/or engaged in the manufacture and distribution of

automatic machinery for the manufacture of pressed and blown glassware and glass containers, and other corporations which neither owned patents on automatic machinery for the production of pressed and blown glassware and glass containers, nor were engaged in the manufacture or distribution of such automatic glass-making machinery, including Anchor Hocking Glass Corporation which was exclusively engaged in the manufacture of glassware, using for said purpose largely automatic machinery leased or licensed to it by the Hartford-Empire Company under its patents, and included as well numerous individuals who were officers or directors of the various corporate defendants, and as such, had participated in the direction and management of said various corporate defendants.

Appellant, Isaac J. Collins, is a stockholder, officer and director of Anchor Hocking Glass Corporation, and the complaint charges that as such officer and director of said corporation he had participated in the "direction and management" of said corporation and had "approved, authorized, ordered and done some or all of the acts therein alleged to have been performed by" said Anchor Hocking Glass Corporation, which said corporation it was alleged "In 1937 * * * joined the conspiracy, monopoly and combination in restraint of trade." Although not averred in the complaint, appellant Isaac J. Collins is also a stockholder of the Hartford-Empire Company, but has never been an officer of said company and has not been a director of said company since December, 1937.

The cause was heard before the Honorable Frank L. Kloeb, United States District Judge. On October 22, 1941, immediately after the plaintiff had completed the presentation of its evidence in support of its case in chief, Anchor Hocking Glass Corporation and its associated individual defendant officers and directors, including appellant, Isaac J. Collins, filed pursuant to Rule 41 (b) of the Federal Rules

of Civil Procedure, their joint and several motion for dismissal, and rested as of said time, and did not participate further in the case, submitting the case as to them upon said evidence presented by the plaintiff in support of its case in chief.

On February 27, 1942, the court dismissed Anchor Hocking Glass Corporation and all associated individual defendant officers and directors with the exception of this appellant, Isaac J. Collins, for lack of evidence connecting them with any of the alleged conspiracies, monopolies and combinations. On May 15, 1942, plaintiff filed a motion for rehearing of said motion of defendant Anchor Hocking Glass Corporation and associated individual defendant officers and directors for dismissal. On June 26, 1942, said court denied plaintiff's motion for rehearing aforesaid except as to the individual defendants J. D. Dilworth, W. V. Fisher and T. C. Fulton, with respect to whom, upon reconsideration, the court denied the aforesaid motion for dismissal as to them.

On October 8, 1942, said court entered a Final Judgment ordering, adjudging and decreeing that this appellant, Isaac J. Collins, was an individual defendant "associated with Hartford-Empire Company" and through said company had acted in violation of Sections 1 and 2 of the Sherman Act, and said Final Judgment generally enjoined Hartford-Empire Company and certain of the other defendants, including appellant, from further violation of the Sherman Act, and specifically enjoined certain practices and required affirmative action. (The provisions of the judgment applicable to appellant as herein summarized are also largely applicable to the other defendants, and there are other detailed provisions as to them.)

Appellant is specifically enjoined, together with the defendant directors and officers of the corporate defendants, from holding or controlling, directly or indirectly, or

through corporations, agents, trustees, representatives, or nominees, any of the issued and outstanding capital stock, bonds or other evidences of indebtedness of, or holding at the same time an office or directorship in more than one corporation engaged either in the manufacture and sale of glassware or in the manufacture or distribution of machinery used in the manufacture of glassware, or in both, and is prohibited while engaged either in the manufacture and sale of glassware or in the manufacture or distribution of machinery to be used in the manufacture of glassware, or both, from acquiring, purchasing, holding or controlling, directly or indirectly, or through agents, representatives or nominees, any of the assets or any of the capital stock or bonds or other evidences of indebtedness of any other defendant corporation, or of any other corporation, firm or individual so engaged. The judgment requires appellant to divest himself of his Hartford-Empire Company stock or Anchor Hocking Glass Corporation stock within two years from the effective date of said judgment.

Appellant is also enjoined from engaging in the distribution of machinery used in the manufacture of glassware in interstate commerce unless all defendants, including appellant, shall offer by written instrument, filed with the Clerk of the Trial Court, to sell such machinery to all applicants by outright sale, at reasonable and equal prices and upon reasonable and equal terms and conditions of sale, failing which appellant is enjoined from engaging in the distribution of machinery used in the manufacture of glassware or in the distribution of glassware in interstate commerce.

The judgment also requires appellant to license all applicants at a reasonable royalty any number of machines and methods used in the manufacture of glassware and embodying inventions covering patents granted on patent

applications filed subsequent to the date of the judgment and owned or controlled by appellant, said royalty to be subject to court approval and all without limit as to use. The license form is subject to court approval and various usual and customary provisions are prohibited. Appellant is prohibited from acquiring patent rights in processes similar or alternative to processes covered by patents already owned by appellant and is enjoined from employing various usual practices and procedures with respect to obtaining patents or protecting against infringement thereof.

Appellant is also enjoined from combining or agreeing as to production limitation of glassware, or machinery used in the manufacture of glassware, price fixing and the collection and dissemination of production and other statistics.

The oral opinion rendered by the trial court February 27, 1942, in connection with the granting of the motion of Anchor Hocking Glass Corporation and associated individual defendants (with the exception of defendant Isaac J. Collins) to dismiss, and the opinion of the trial court in connection with the rendering of the Final Judgment (reported 46 Fed. Supp. 541) are appended hereto.*

Dated: December 7, 1942.

Respectfully submitted,

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* (Clerk's Note—The opinion is printed as a separate volume.)

APPENDIX.

Oral Opinion Rendered by the Court, February 27, 1942, Granting Motion of Anchor Hocking Glass Corporation and Associated Individual Defendants to Dismiss.

Transcript 11254, et seq.

THE COURT: Now, in connection with the Anchor-Hocking matter, I think so far as the Court is concerned that has been the hardest problem before the Court. The motion of the Anchor-Hocking is for the discharge of the defendant corporation, as well as the discharge of some five or six individuals who constitute its officers and directors, viz: Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Herman Krannert, V. E. Macy, Jr., J. H. Moffett, Ernest Stauffen, Jr., L. B. Williams, J. O. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin, and F. B. Schlub, and each of them.

There has been a lot of evidence, the record is replete with a lot of steps taken by the Hocking Company up until its affiliation with Anchor-Hocking and various acts are charged during the course of quite a number of years of the violation of the Anti-trust Act, the onus of which is sought to be cast upon the shoulders of the present Anchor-Hocking Glass Corporation.

The Hocking concern, as I recall, was organized back as far as 1906, and Mr. I. J. Collins has been its president for a great many years. Mr. I. J. Collins seems to have been a busy man, and along about 1929, he, having become a stockholder of the Monongah concern, decided that he would become its president, and was thereupon named its president. Some time thereafter the Monongah concern gave up the ghost and was taken over and its assets taken over by the Turner Company. The Turner Company was a company in which Mr. I. J. Collins had some stock, and so Mr. Collins became a director on the board of the Turner Corporation, about 1930, and proceeded to exercise his authority as a member of that board. The Turner Corporation, however, in the space of four short months, went into the hands of a receiver and was sold out through the

Federal Court at, I believe, Indianapolis. There were negotiations that are claimed to have been vicious, over a period of years, between Mr. I. J. Collins and Mr. Mandeville, of Thatcher, seeking a combination of the Thatcher and the Hocking interests for the purpose of combining their efforts in the glass making industry. There was some effort made that resulted in the organization of the General, at the time that Turner gave up the ghost. And Thatcher and Hocking each agreed to supply half of the capital in the organization of General, which took over the assets of Turner, and possibly some remaining assets of the Monongah,—I don't just recall at this time. At any rate, after General had operated for a while and apparently required large sums of cash over a period of time in its operation, some sort of a suggestion was made one day by Mr. William E. Levis to Mr. Collins. I find no indication that a firm offer was made, but the psychological effect was there of the sum implanted upon the mind of Mr. Collins, that perhaps the sum of $750,000 would buy his half-interest in General. Whereupon Mr. Collins approached Mr. Mandeville, of Thatcher, and said, "Now, I believe I am prepared to pay you $750,000 for your half of Thatcher," whereupon Mr. Mandeville said "fine," and Mr. Collins found himself in possession of General. Thereupon the Thatcher concern reaped a profit after taking what it had invested in General of $510,000. Now, I see no harm in that so far as Mr. Collins was concerned. I don't see he violated the law in any way by that sort of transaction and I don't know that any law was violated so far as the law of the land is concerned, in the course of that transaction. Anyhow, following that, the problem came up of a combination of the Anchor Hocking and of the Anchor Cap Corporation that was in control, as wholly-owned subsidiaries, of Capstan and Salem as manufacturing agents.

Now, the mere fact that Mr. Levis introduced Mr. Stewart or some member of the Board of directors, I believe Mr. Dilworth, to Mr. Collins, in the course of that transaction, is no indication to me there was any violation of the Sherman Anti-Trust Act there. At any rate that combina-

tion was made. It was not a combination of competing industries as such. I can see no violation of the law, in that there was an illegal merger of those particular concerns. So I can find no violation there.

Now, the present Anchor-Hocking concern is the outgrowth of that combination, I think in 1938, and Mr. I. J. Collins is the president of that new concern, which now is a concern operating the Capstan and Salem Companies and the Anchor Cap Company, which is not a glass-making concern, the remnants of Monongah and of Turner and of General, and, of course, the physical body of the Hocking concern. It undoubtedly is a very large corporation now, but I cannot find in the course of studying the history of these various transactions that so far as this corporation, the Anchor-Hocking, is concerned, that there has been any violation of the law by it, and I cannot bring myself to believe that any alleged violations of the law on the part of Capstan or Salem, or in the collapse of Monongah and Turner, are inherited and cast upon the shoulders of the present Anchor-Hocking Glass Corporation.

Therefore, I think so far as Anchor-Hocking Glass Corporation is concerned, and so far as its officers and directors are concerned, save with the exception of Isaac J. Collins, that the motion ought to be sustained. I think that so far as the Court is concerned, he has a duty to retain Isaac J. Collins as a party defendant in this case. I think the record justifies the Court's retaining Isaac J. Collins as a party in this case until such time as the Court has concluded the case. If the Court feels that some relief is due from the Court eventually as against certain defendants in this case, he may feel that same course might necessarily be followed with relation to the future activities of I. J. Collins.

The other motions are sustained, so far as the Anchor-Hocking and the other defendants are concerned.

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

October Term, 1943

No. [redacted] 10

ISAAC J. COLLINS, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, *Appellee.*

Appeal from the District Court of the United States for the Northern District of Ohio, Western Division

BRIEF ON BEHALF OF APPELLANT

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IN THE

Supreme Court of the United States

October Term, 1943

No. 15

ISAAC J. COLLINS, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, *Appellee.*

Appeal from the District Court of the United States for the Northern District of Ohio, Western Division

---

BRIEF ON BEHALF OF APPELLANT

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IN THE

Supreme Court of the United States

October Term, 1943

No. 15

ISAAC J. COLLINS, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, *Appellee.*

BRIEF ON BEHALF OF APPELLANT

I. OPINION BELOW

The District Court rendered three opinions pertinent to this appeal.

The first was an oral opinion[1] rendered on February 27, 1942, as of the conclusion of the plaintiff's case in chief, granting the motion for dismissal of the defendant Anchor Hocking Glass Corporation and all of its associated defendant officers or directors except appellant. This opinion is not reported.

The second was an oral opinion[2] rendered on June 26, 1942, overruling plaintiff's motion for a rehearing of the above motion to dismiss except as to three of said associated individual defendants. This opinion is not reported.

The third opinion[3] (filed August 25, 1942), rendered

[1]R. 6842.
[2]R. 6854.
[3]Printed as separate volume of record.

upon the merits at the conclusion of the entire case, is reported in 46 Fed. Supp. 541.

II. JURISDICTION

The jurisdiction of this court is based upon Section 2 of the Expediting Act of February 11, 1903 (32 Stat. 823) as amended by the Act of March 3, 1911 (36 Stat. 1167; 15 U. S. C. Section 29) and upon Section 238 of the Judicial Code as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938; 28 U. S. C. Section 345). *United States vs. Masonite Corporation*, 316 U. S. 265; *United States vs. Univis Lens Co.*, 316 U. S. 241; *Chrysler Corporation vs. United States*, 316 U. S. 556. Probable jurisdiction was noted on March 1, 1943. The judgment of the court below was entered on October 8, 1942, and the petition for appeal was filed and allowed on December 7, 1942.

III. STATEMENT OF THE CASE

(a) Introductory

This is one of ten separate appeals (Nos. 7 to 16, inclusive) arising out of a single proceeding had in the District Court of the United States for the Northern District of Ohio, Western Division, wherein the United States sought under Section 4[1] of the Sherman Act to "prevent and restrain" alleged violations of Sections 1[1] and 2[1] of the Sherman Act and Section 3[1] of the Clayton Act.

By stipulation[2] between the appellee and the appellants in the various appeals, for convenience a single consolidated record on appeal has been printed embodying all of the evidence deemed relevant to any issue in any of the appeals.

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[1]Printed in full in Appendix, pp. 65-67 *post*.
[2]Filed with the Clerk of this Court on March 4, 1943.

The issues involved in this appeal are in the main not common to any of the other appeals (except appeal No. 16) and will require consideration of only a very minor portion of the proceedings below as embodied in the consolidated record, and we shall accordingly limit our brief to a consideration thereof.

(b) Nature of the Case

On December 11, 1939, the United States filed the complaint in this case against twelve corporate defendants[3] charging (as amplified by bills of particulars) that over a period of years beginning in about 1916 there had been established and maintained by and between certain of the corporate defendants in violation of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act, a "principal" conspiracy, combination in restraint of trade and a monopoly with respect to (1) patents covering automatic machinery for the production of pressed and blown glassware and glass containers, and (2) the manufacture and distribution of automatic machinery for the production of pressed and blown glassware and glass containers; and that incidental to said "principal" conspiracy, combination and

[3]Hartford-Empire Co.; Corning Glass Works; Empire Machine Co. (dissolved in the course of the proceedings); Owens-Illinois Glass Co.; Hazel-Atlas Glass Co.; Thatcher Manufacturing Co.; Lynch Corporation; Ball Brothers Company; Glass Container Association of America, Inc.; The Stevenson Corporation (dismissed in the course of the proceedings); Liberty Glass Company and Anchor Hocking Glass Corporation. The latter two companies were dismissed upon motion as of the conclusion of the plaintiff's case. For convenience, we shall refer to the various parties as plaintiff or defendant as they were in the court below, and to the former defendant Anchor Hocking Glass Corporation as "Anchor Hocking," and make similar abbreviations of the names of the other corporate defendants in the court below. Unless otherwise indicated, all italics, parentheses, bold faced type and other forms of emphasis incorporated throughout this brief are ours.

monopoly[4] certain "incidental" conspiracies, combinations and monopolies[4] were from time to time established and effectuated through the conditional and restrictive licenses granted under said patents and the conditional and restrictive leasing of glass making machinery by means of which those having control of said patents and machinery were able to and did restrict (1) the manufacture and sale of such machinery and (2) the manufacture and sale of glassware in violation of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act. It was further charged that the various corporate defendants from time to time either directly joined said "principal" conspiracy, etc., or became connected therewith, a member thereof and a participant therein through one or more of said "incidental" conspiracies, etc.

Officers and directors of each of the corporate defendants were also made defendants and charged with participation in the foregoing through the direction and management of the corporate defendants with which they were respectively associated as such officers or directors.

(c) The Alleged Connection and Participation of Appellant Collins

Among the twelve corporate defendants below was Anchor Hocking Glass Corporation of Lancaster, Ohio, of which the appellant herein, Isaac J. Collins, was the president and a director.[5] He *is not* and *was not* at the time this suit was filed an officer or director of any other corporate defendant or of any other company engaged in the glass business.[5]

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[4]The complaint refers to a conspiracy, combination and monopoly. In the interest of brevity we shall include all of these in the term "conspiracy, etc.," in our references throughout the brief.

[5]FF. 617, R. 7399.

Appellant Collins and fifteen other officers or directors of Anchor Hocking were named in the complaint[6] as defendants who

> "have been and are officers or directors, and have participated and participate in the direction and management of defendant *Anchor Hocking*. Such individual defendants have approved, authorized, ordered and done some or all of the acts herein alleged to have been performed by defendant *Anchor Hocking*."

The complaint similarly named as individual defendants associated with the various corporate defendants, the officers and directors thereof, and in each instance made a similar allegation as to their participation in the direction and management of the respective corporations of which they were officers or directors.

The above quoted paragraph of the complaint is the sole allegation in the entire complaint as to the capacity in which Appellant Collins was joined as a defendant below. *He was in no wise charged with any violation of the anti-trust acts either individually or otherwise except through his participation in the direction and management of Anchor Hocking.*

Anchor Hocking is and at all times has been strictly and exclusively engaged in the *manufacture of various lines of glassware,* caps and closures for glass containers, and packing boxes for glass articles for its own use or sale.[7] It has never engaged either in the business of holding or acquiring patents relating to glass making machinery or otherwise or licensing others thereunder. Nor has it ever manufactured and licensed, leased or distributed glass making machinery. The patent and machinery situation in the glass industry is in no wise of its making and it has never had any control over or part in determining the policies

[6]Par. 25 of Complaint, R. 8.
[7]R. 2894.

followed by the patent owners or machinery manufacturers either in connection with the licensing under said patents or the leasing of glass making machinery made pursuant thereto.

In the conduct of its business of manufacturing glassware, Anchor Hocking uses largely automatic machinery leased or licensed to it for said purpose by the defendant Hartford-Empire under the latter's patents. The terms and conditions of its licenses and leases were necessarily determined in the last analysis by the owners of the patents and machinery.[8] Anchor Hocking's president, Appellant Collins, from the very beginning persistently sought the removal of the various restrictive provisions herein complained of from the licenses and leases of the companies with which he was connected.[9]

The complaint charged[10] that Anchor Hocking joined the asserted conspiracy, etc., *in 1937* (December), through the purchase of the assets of Hocking Glass Company, which purchase was charged to have been induced by the defendants Hartford-Empire and Owens.

(d) Proceedings Below

On October 22, 1941, at the conclusion of the government's case in chief, *Anchor Hocking* and all its associated individual defendant officers and directors, *including Appellant Collins,* filed a motion for dismissal, *rested* as of that time, and *did not participate* further in the trial.[11]

The principal basis upon which said motion was rested was that Anchor Hocking and its associated officer and director defendants had not been shown to have had any connection with or participation in the alleged conspiracy,

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[8]R. 3424.
[9]R. 3002. See Point 1, pp. 24-26 *post.*
[10]Par. 169 of Complaint, R. 49.
[11]R. 526-7; 4247; 4281; 6027.

etc., nor with or in any of the acts, policies or practices in connection therewith which were in any wise unlawful.

On February 27, 1942, the court so found and determined and entered an order granting said motion and dismissing Anchor Hocking and all its associated individual defendant officers and directors, with the exception of this appellant.[12]

In connection with the granting of said motion the court expressly stated that he could find no indication of any violation of the anti-trust laws in the transaction whereby Anchor Hocking was claimed to have joined the asserted conspiracy, etc., in December, 1937, *viz.*, through the purchase of the assets of Hocking Glass Company, or otherwise.[13] Thus Anchor Hocking was completely absolved from any connection with the asserted conspiracy, etc., and the alleged unlawful acts, policies and practices in connection therewith, and the dismissal of *all* its associated officers and directors should likewise have followed as a matter of course, *since the complaint charged them with connection and participation only through their activities as such officers or directors of Anchor Hocking.* And indeed the court did at that time order all such defendants dismissed save Appellant Collins, as to whom the court said:[14]

> "Therefore, I think so far as *Anchor Hocking Glass Corporation* is concerned, and so far as its *officers* and *directors* are concerned, save with the exception of Isaac J. Collins, that the motion ought to be sustained. I think that so far as the court is concerned, he has a duty to retain Isaac J. Collins as a party defendant in this case. I think the record justifies the court's retaining Isaac J. Collins as a party in this case *until* such time as the court has concluded the case. If the court feels that some relief is due from the court eventually as against certain defend-

[12] R. 530.
[13] R. 6844.
[14] R. 6844-5.

ants in this case, he may feel that same course might necessarily be followed with relation to the future activities of I. J. Collins.

"The other motions are sustained, so far as the Anchor-Hocking and the other defendants are concerned."

On May 15, 1942, plaintiff filed a motion for rehearing of the motion for dismissal aforesaid.[15]

On June 26, 1942, the court denied plaintiff's motion for rehearing except as to the associated individual defendants J. D. Dilworth, W. V. Fisher and T. C. Fulton (appellants in Appeal No. 16) with respect to whom, upon reconsideration, the court denied the aforesaid motion for dismissal as to them. In disposing of the motion for rehearing, the court said:[16]

"The court feels that he is not justified in changing his former ruling in sustaining the motion to dismiss the complaint as against the Anchor-Hocking Corporation, and so the motion to reconsider will be overruled.

"The court does feel that so far as the matters pertaining to Isaac J. Collins, J. D. Dilworth, W. V. Fisher and T. C. Fulton are concerned, that these defendants *in connection with the Anchor-Hocking Corporation* ought to be retained as parties defendant, and in the entry providing for the dismissal, sustaining of the motion as regards the Anchor-Hocking, the dismissal of the Anchor-Hocking concern, these four gentlemen shall be retained as parties defendant."

The United States did not appeal from the order of the court dismissing Anchor Hocking and (with the exceptions noted) the individual defendants associated with it as officers and directors. Hence such judgment of dismissal is final and neither Anchor Hocking nor (with the exceptions

[15]R. 530-1.
[16]R. 6854.

noted) any of said individuals are parties to any proceedings in this court.

On August 27, 1942, the court entered its Findings of Fact (628 in number) and its Conclusions of Law (89 in number) upon the entire case. Of these, but nine seem presently pertinent to this appeal.[17]

On October 8, 1942, the court entered a final judgment.

Paragraph 3 of the final judgment, in so far as pertinent, provides:

> "3. The defendant *Hartford-Empire Company* and defendants F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, A. M. Pease, Amory Houghton, Arthur A. Houghton, Jr., and *Isaac J. Collins* (such individual defendants being hereinafter collectively referred to as *the individual defendants associated with Hartford-Empire Company*); * * * and each of them, have contracted, combined, and conspired to restrain trade, and have monopolized, attempted to monopolize, combined and conspired to monopolize trade, in violation of Sections 1 and 2 of the Sherman Anti-trust Act."

From the foregoing paragraph 3 of the final judgment, and from the pertinent Findings of Fact and Conclusions of Law enumerated in the margin,[17] it incontrovertibly appears that the court overruled the aforesaid motion for dismissal as to Appellant Collins and retained him as a party defendant upon the erroneous assumption[18] that he was an "individual defendant(s) associated with Hartford-Empire Company" and through that company had become connected with and participated in the asserted conspiracy, etc.

Such a finding and conclusion not only goes entirely

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[17]FF. 15, R. 7280; FF. 23, R. 7282; FF. 210, R. 7323; FF. 617, R. 7399; FF. 618, R. 7399; FF. 619, R. 7399; and FF. 620, R. 7399; CL. 86, R. 7419; CL. 89, R. 7420. These will be discussed in detail *post* in the section devoted to the Argument.

[18]See Par. 25 of Complaint, R. 9.

beyond the scope of the complaint and is a manifest departure therefrom, but *is wholly unsupported either by the evidence or the court's own findings.* Each finding of fact and conclusion of law and the record proof with regard to the same is discussed in detail under Points 1 and 2 of the Argument, *post.* Suffice it to say here that unlike the other ten individuals named in paragraph 3 of the judgment above, all of whom were in terms charged in the complaint with having joined and participated in the asserted conspiracy, etc., as officers or directors of the defendant Hartford-Empire, and all of whom in fact were such both at the time the suit was filed and the judgment entered, *Appellant Collins was neither an officer nor director of Hartford-Empire at either of said times.* He was never an officer of Hartford-Empire and had not been a director for more than two years prior to the filing of the suit.

Throughout the entire time in which he was a director of Hartford-Empire the record indisputably establishes that he militantly opposed the restrictive lease and license provisions and the other acts, policies and practices of Hartford-Empire which the court below found to be unlawful. His only "connection" or "association" with Hartford-Empire was and is as a small minority stockholder. His total holdings of such stock aggregate only two per cent of the outstanding common stock.[19] There is not a scintilla of evidence in the record of any control by him over or responsibility for Hartford-Empire or its policies herein complained of. Indeed, the record shows persistent and bitter opposition by him thereto. The complaint contains no claim of his having become connected with or participated in the asserted conspiracy, etc., through any "connection" or "association" with Hartford-Empire. On the contrary, he was charged in the complaint with wrongdoing *solely*

[19]Ex. 1583, R. 3904, 8095-8106D.

through his being an officer and director *of Anchor Hocking,* which was found to have had no connection with or participation in the asserted conspiracy, etc.

(e) Summary of Final Judgment

Although Appellant Collins was adjudged to have become connected with and participated in the asserted conspiracy, etc., through the defendant Hartford (presumably by reason of his having formerly been a director of Hartford) all provisions of the final judgment run against him not in any such representative capacity, but in his personal capacity and against his personal property rights. Appellant Collins is specifically required to either divest himself of his small stock interest in the defendant Hartford-Empire or to divest himself of his substantial stock interest in the dismissed Anchor Hocking. It further enjoins him in perpetuity from holding any capital stock, bonds or other evidences of indebtedness and from acting as an officer or director of more than one corporation engaged either in the manufacture or distribution of glass making machinery or engaged in the manufacture of glassware, or in both.

He is prohibited while engaged in any capacity in the manufacture of glassware or glass making machinery from acquiring or purchasing the assets, capital stock, bonds or other evidences of indebtedness of any other corporation, firm or individual so engaged.

He is further perpetually enjoined from engaging in the distribution of glass making machinery (appellant has *never* engaged in that business in the past) unless Hartford offers to sell such machinery to all applicants by outright sale at reasonable and equal prices and upon reasonable and equal terms.

He is similarly perpetually enjoined from engaging in the distribution either of glass making machinery or glass-

ware unless he agrees to license all applicants royalty free under all presently owned patents or patent applications relating to glass making machinery, and similarly at a reasonable royalty under such patents hereafter granted to or controlled by appellant (appellant has *never* owned or controlled any patents in the past), said royalty to be subject to court approval and without limit as to use, various usual and customary provisions in the license being prohibited. He is prohibited from acquiring patent rights in processes similar or alternative to processes covered by patents then owned by appellant, and is prohibited from employing various usual practices and procedures with respect to obtaining patents or protecting against infringement thereon.

The restraints and prohibitions of the judgment are as broad and sweeping in their effect upon this appellant (who is only claimed to have participated in *one* transaction found below to have been unlawful, and that in May of 1932)[20] as they are with regard to other individual defendants in the court below who were found to have participated through the various corporate defendants in scores of transactions from 1916 to 1942. The provisions thereof are made applicable to appellant without regard to there being any basis therefor in the record and in disregard of the decisions of this court as to the permissible limits of any such judgment.

From said final judgment the Appellant Collins promptly perfected this separate appeal.

IV. SPECIFICATION OF ERRORS

The errors assigned by appellant cover 12 pages of the record.[21] All errors assigned are material to the issues discussed herein, are hereby specified as being relied upon and

[20] FF. 210, R. 7323.
[21] R. 7900-12.

are designated and discussed under the various sections of the brief to which they relate. The following is merely a summary thereof:

1. The court below erred in overruling appellant's motion for dismissal and in finding as a fact and concluding as a matter of law that he had become connected with, had participated in and was a party to the asserted conspiracy and monopoly, and in entering its judgment against him because:

(a) As a matter of law, no connection or participation could be imputed to appellant through his having been an officer and director of the dismissed Anchor Hocking.

(b) Neither the record proof nor the findings of fact nor the cited evidence upon which said findings are rested in any wise support the conclusion that appellant became connected with or participated in the asserted conspiracy and monopoly through Hartford-Empire. On the contrary, such conclusion is contrary to the undisputed proof upon the subject.

(c) There is no evidence and no finding of fact which is supported by any evidence that appellant "authorized, ordered or did any of the acts" of any of the corporate defendants which in whole or in part were found to have been violative of the anti-trust laws.

2. The court below erred in the admission and consideration of certain evidence and in failing to rule upon and sustain appellant's motion to strike same.

3. The provisions of the final judgment as to appellant are not only wholly unsupported by any evidence or findings, but are unnecessarily harsh and severe, impose purely punitive restraints upon him in his personal capacity, and are unwarranted and beyond the power of the court under Section 4 of the Sherman Act.

V. ARGUMENT

Point 1

Appellant Collins Never Participated In Nor Became Connected With Nor in Any Wise Responsible for the Asserted Conspiracy and Monopoly and Should Have Been Dismissed Along With Anchor Hocking and Its Other Associated Defendant Officers and Directors.[1]

1. No Connection or Participation Could Have Resulted From His Having Been an Officer or Director of Anchor Hocking.

Derivative liability for violation of the anti-trust laws such as is here attempted to be imposed upon Appellant Collins as an "individual defendant associated with Hartford-Empire Company"[2] must be rested, if at all, upon Section 14 of the Clayton Act,[3] which provides in part:

> "Whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers or agents of such corporation who shall have authorized, ordered or done any of the acts constituting, in whole or in part, such violation * * *."

Thus this statute in terms makes violation of the anti-trust laws by an individual arising out of his official connection with a corporation depend upon (a) a violation by the corporation; (b) the individual being or having been a director, officer or agent of said corporation (the statute does *not* refer to *stockholder*); *and* (c) such director, offi-

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[1]The assignments of error relied upon in connection with Point 1 in the order discussed are numbers I (1), (2), (3), A, B, C, E and F; III 1A, 1B, 1C, 2 and 3; II 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13.

[2]See par. 3 of Final Judgment, R. 7657.

[3]Title 15 U. S. C. A., Sec. 24, Printed in full in Appendix, p. 67 *post*.

cer or agent having either (1) authorized, (2) ordered, or (3) done some of the acts constituting a violation by said corporation.

As pointed out *supra*, the *only* connection which the complaint charges[4] Appellant Collins had with the asserted conspiracy, etc., was as an officer and director of Anchor Hocking, and it was *solely* in that capacity that he was named in the complaint as a defendant and *only* through his activities as such officer and director that he was charged in the complaint with having joined or participated in the alleged conspiracy, etc. There was no charge in the complaint that Appellant Collins violated the law as a director, officer or agent of any other corporation, or otherwise, except through his having "approved,[5] authorized, ordered and done some or all of the acts herein alleged to have been performed *by defendant Anchor Hocking.*"

A prerequisite to the liability of Collins under Section 14 of the Clayton Act and the allegations of the complaint in this case is that *Anchor Hocking* must have violated the anti-trust laws and that Collins, must "have authorized, ordered or done any of the acts constituting, in whole or in part, such violation." The judgment of the court below, dismissing Anchor Hocking, conclusively establishes that that company did not violate the anti-trust laws and did not participate in or have any connection with the alleged conspiracy, etc., and that the acts charged to have been performed by it were lawful and proper, thus completely absolving it from all charges made against it herein. No appeal was taken by plaintiff, and that judgment is now final. It is submitted that in such circumstances, and in view of the provisions of Section 14 of the Clayton Act, it cannot possibly be tenably claimed now that

[4]See Par. 25 of Complaint, R. 9.

[5]Section 14 of the Clayton Act does not include the term "approve."

the requisite connection or participation of this appellant with the asserted conspiracy, etc., is to be found, as charged in the complaint, in his activities as an officer or director of Anchor Hocking, its subsidiaries or predecessors.

Indeed, notwithstanding the express allegations of the complaint, neither the Findings, Conclusions nor the Judgment purport to rest the requisite connection of appellant on his activities as an officer or director of Anchor Hocking and subsidiary or predecessor companies.[6] Nor do the Findings, Conclusions or Judgment hold unlawful or in any wise violative of the anti-trust laws any of the acts or activities of or any of the transactions in which Anchor Hocking or its subsidiary or predecessor companies engaged.

Hence the charge in the complaint that Appellant Collins joined and participated in the asserted conspiracy, etc., through Anchor Hocking, is totally without any foundation in the record. Any other asserted basis of connection is a departure from and wholly without the scope of the complaint and under the plain and unambiguous provisions of Section 14 of the Clayton Act Appellant Collins should have been dismissed along with Anchor Hocking and its other associated defendant officers and directors.

2. No Connection or Participation Is Shown From His Acts or Activities as a Director of Hartford From 1926 to 1937.

The court below admitted over appellant's objection as going to the question of his connection with and participation in the asserted conspiracy, etc., evidence as to his acts as a *former director of Hartford from 1926 to 1937.* This, notwithstanding the fact that the complaint

[6]See FF. 15, R. 7280; FF. 210, R. 7323; FF. 618, R. 7399; CL. 86, R. 7419; CL. 89, R. 7420; Par. 3 of Final Judgment, R. 7657.

(1) did not charge him with either connection with or participation in the asserted conspiracy, etc., *through Hartford,* or as an officer, director or agent thereof, (2) does not purport to make him a defendant in any such capacity, and (3) on the contrary charges him with having joined the conspiracy, etc., *in December, 1937,* through participation in the management of *Anchor Hocking.* Nor was any attempt made to amend the complaint or otherwise amplify the charges in this regard. The admission of this evidence and its consideration upon the question of appellant's connection and the failure to consider and sustain appellant's motion to strike the evidence was manifest error.[7]

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[7]Throughout the trial, Anchor Hocking and its associated defendant officers and directors, including appellant, consistently objected (R. 1084, 2896, 2911, 2918) to the introduction or reception for any purpose *and particularly for the purpose of connection* of any evidence as to them which involved transactions, other than the purchase *in 1937* of the assets of Hocking Glass Company, which was the *sole* transaction through which it was alleged in paragraph 169 of the complaint they joined the asserted conspiracy, etc. (R. 49). All of the evidence, oral and documentary, was tendered and received in the cause subject to each defendant being connected into the alleged conspiracy and subject to a general objection by each defendant that all of such evidence was irrelevant, immaterial and incompetent for all purposes, including the purpose of connection (R. 643-5, 658, 1084, 2896, 2975, 2978, 3025-26). At the time that Anchor Hocking and its associated defendant officers and directors, including appellant, filed their motion to dismiss, they also filed a "motion to strike evidence," which requested that as to them the court strike from the record the evidence relating to matters other than the purchase of Hocking or limit its use so as not to permit it to be considered *for connective purposes* in connection with the consideration of their motion to dismiss, the ground of the motion being that said evidence was irrelevant, incompetent and immaterial and a departure from and beyond the scope of the pleadings or any issues raised thereby, *particularly as to the issue of connection with the asserted conspiracy, etc.* Among other matters, this motion was specifically directed to "any and all evidence, oral or written, relating to acts or activities of Mr. I. J. Collins while a director of Hartford-Empire Company (1926-1937)." (See motion (R. 533.)) *The court never ruled upon this motion.* Assignments of Error III, 1A, 1B, 1C and 2, R. 7907-8.

Nor is this case one in which it would be proper to treat the complaint as though it had been amended to conform to the evidence and so hold Appellant Collins in the case because:

(a) There was, as hereinafter shown, no evidence, either at the conclusion of plaintiff's case in chief (when Appellant Collins also rested his case) or even at the conclusion of all of the evidence in defense and rebuttal affecting other defendants, showing that Collins authorized, ordered or did any of the acts of Hartford-Empire which the court below adjudged to have been wrongful;

(b) Collins was never put on notice by the plaintiff that any such claim would be made against him. The government never filed or asked leave to file any pleading making any such claim. He, therefore, had no occasion to make any defense against such claim and rested his case without doing so. Therefore he has had no day in court with respect to the matters as to which the court below erroneously held him to be a conspirator; and

(c) Such evidence as is claimed by the plaintiff, and is treated by the court below, as connecting him, as a former director of Hartford-Empire, with the conspiracy, was admitted either over his objection before he had rested his case, or after he had rested his case, *during the pendency* of his motion to strike said evidence, and that the complaint be dismissed for want of evidence.[8] In such circumstances, it clearly would have been erroneous for the court below to have permitted an amendment without reopening the case and affording Appellant Collins an opportunity to meet the amended pleading.

Under such circumstances, manifestly it would be unjust for a reviewing court to consider the case (contrary to the fact) as though it were one in which a proper amend-

[8]The court below did not rule on the motion to dismiss until the conclusion of the entire case.

ment had been filed at the proper time and proper opportunity thereafter accorded the Appellant Collins to meet it.

Moreover, the record shows that Appellant Collins was never an officer of Hartford and he was not a director of Hartford when the complaint was filed and had not been such for more than two years.[9]

Notwithstanding the foregoing, it is entirely clear from the Findings of Fact[10] and from the Conclusions of Law,[11] and Paragraph 3 of the Final Judgment,[12] that the motion for dismissal of Appellant Collins was overruled and he was retained as a defendant by the court below as an "individual defendant(s) associated with Hartford-Empire" on the theory that he became connected with and participated in the asserted conspiracy and monopoly through Hartford-Empire.

This is wholly unsupported both by the evidence and the court's own Findings.

(a) The Record Proof Shows No Connection With or Participation In the Asserted Conspiracy, Etc., by Appellant Through Hartford.

For nearly four decades Isaac J. Collins has been a glass manufacturer.[13] In 1905 he and two associates, T. C. Fulton (one of the appellants in Appeal No. 16) and E. B. Good, now deceased, organized the *Hocking Glass Company,* hereinafter referred to as "Hocking."[14] The plants of Hocking were located at Lancaster, Ohio, where it manufactured tableware and industrial glassware. It was a hand gathering plant until 1918 or 1919, when it took

[9]FF. 15, R. 7280.
[10]FF. 15, R. 7280; FF. 210, R. 7323, and FF. 618, R. 7399.
[11]CL. 86, R. 7419; CL. 89, R. 7420.
[12]R. 7657.
[13]R. 2892; 3010.
[14]R. 2893; 3010.

a Hartford license in the tableware field, and put in Hartford automatic machinery.[15] It initially employed 75 or 100 persons, doing about $75,000 of business per year. Anchor Hocking purchased the assets of Hocking in December of 1937, and at the time of trial the company employed about 6,500 persons, and its annual volume was about $24,000,000 gross.[16] This, however, represented only about 8% of the United States glass container business.[17]

Appellant Collins was the president and a director of Hocking from the time it was organized in 1905 until its assets were sold to Anchor Hocking in December, 1937, at which time he became president and a director of Anchor Hocking[18] and has continuously served as such to date. It was in this capacity that he was made a defendant below.[19]

In 1926 Appellant Collins owned a minority interest in the common stock of the Monongah Glass Company,[20] which in turn owned approximately one-sixth of the common stock of Hartford-Empire.[21] In 1926 Collins was elected a member of the Board of Directors of Hartford-Empire.[22] In 1927 Appellant Collins made a single individual purchase of 2000 shares of the Hartford-Empire stock owned by Monongah (approximately 2% of the issued and outstanding stock) in an effort to alleviate the financial distress of Monongah and keep it operating as an active, going concern.[23] He never purchased another share.[24] He remained on Hartford's Board of Directors until December, 1937, when he resigned.[25]

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[15]R. 2893; 3011.
[16]R. 3011.
[17]R. 65-66.
[18]FF. 617, R. 7399.
[19]Pars. 25 and 169 of Complaint, R. 9, 49.
[20]R. 3011-12.
[21]R. 2900.
[22]R. 2901.
[23]R. 3013-14.
[24]R. 3014.
[25]FF. 15, R. 7280.

From 1905 to date, Appellant Collins has been actively engaged as *a manufacturer of glass products.* His experience and principal and primary interest is and has been exclusively in the *manufacturing end* of the glass business through companies having plants in Ohio, West Virginia and Indiana, in which he had large financial investments and with which for the most part he was associated as an officer or director long prior to the time he owned a single share of Hartford-Empire stock. Hartford never engaged commercially in the manufacture of glass.[26] It was a patent holding company engaged in the development of glass making machinery[27] and Collins never took any active part in its direction or management and devoted very little time or attention to it.[28] He was *never* an officer of Hartford-Empire; his investment in that company was comparatively small;[29] and he had no experience and little interest in the patent and machinery development business.[30] He was asked to serve on the Board solely because he was a successful glass manufacturer.[31] He lived in Lancaster, Ohio, and rarely attended meetings of the Hartford Board.[32]

The active direction of Hartford-Empire was carried on by the Executive Committee of the Board of Directors.[33]

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[26]R. 641.
[27]R. 640.
[28]R. 2928, 2948, 2980, 2984.
[29]Ex. 1583, R. 3904, 8095-8106D.
[30]R. 2944, 2984.
[31]R. 2901.
[32]Ex. 1641, R. 3942, 14062-65, is the minutes of the meeting of the Hartford Board of Directors of November 9, 1932, approving the Hartford, Hazel and Owens agreements. Collins was *not* present. Ex. 1642, R. 3942, 14065-66, is the minutes of the Hartford Board of May 9, 1933, approving the contract with Ball Brothers. Collins was *not* present. Ex. 1643, R. 3942, 14066, is the minutes of the meeting of the Hartford Board of November 24, 1933, approving the agreement with Lynch Corp. Collins was *not* present.
[33]R. 1281.

Collins was *never* a member of that committee. The various matters pertaining to the company's patents and the granting of licenses and the policies in connection therewith were handled by a Licensing Committee of the Board of Directors.[34] Collins was *never* a member of that committee. Collins rarely, if ever, served upon any committee of the Board.[35] As a matter of fact, such transactions involving Hartford as Collins participated in were almost exclusively those relating to license rights of glass manufacturing companies in which he was financially interested and which latter companies he openly represented in such transactions.[36]

Of the scores of transactions in which the government claimed Hartford-Empire violated the anti-trust acts, nearly all individuals who were claimed to have taken any part were called as witnesses. Each witness was examined in detail about the various transactions complained of and was asked to name the individuals who were present or participated therein. Not a single witness testified that I. J. Collins ever represented *Hartford-Empire* in any of the transactions.

The government was given access to all of the correspondence of all defendants, as well as all minutes of Hartford-Empire Company. In support of Finding of Fact No. 15,[37] that Collins joined and participated in the asserted conspiracy and monopoly through Hartford-Empire, there is cited the minutes[38] of but two Board of Directors' meetings of Hartford-Empire and but one

[34]R. 2944, 3233.

[35]See, for example, Exhibit 1644, R. 3942, 14067, which is the minutes of Board of Directors of Hartford-Empire Company on September 19, 1935, appointing a committee on the revision of contracts to consider a revision of the agreements with Owens-Illinois and Hazel-Atlas. Collins was not a member of the committee appointed for that purpose.

[36]R. 2903, 2906-7, 2921-22, 2925, 2933, 2942, 2992.

[37]R. 7280.

[38]Ex. 1644, R. 3942, 14067; Ex. 2005, R. 6746, 14633-4.

letter[39] *from* Appellant Collins and but one letter[40] received *by* him. These will be discussed in detail in connection with the specific Findings but are noted here as illustrative of the pervasive paucity of plaintiff's proof as to this appellant.

We unqualifiedly assert that the record fails to show a single instance in which Collins as a director of Hartford-Empire has "authorized, ordered or done any of the acts" of Hartford-Empire adjudged to have been in violation of the anti-trust laws.[41]

Not only is there a complete failure of proof in this regard, but on the contrary the record is replete with instances where Collins while a director of Hartford disagreed with and opposed Hartford's acts, policies and practices, particularly its policy of restricted licenses and leases[42] which is the *sine qua non* of plaintiff's case. His attitude is summed up in his testimony that "We felt we ought to have the right to make anything we wanted to make."[43] Such has been his attitude and that of the com-

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[39]Ex. 1154, R. 2948, 13771-2.

[40]Ex. 160, R. 937, 12676.

[41]As a member of the Hartford Board of Directors he did not vote for or otherwise authorize or approve a single one of the agreements found by the court below to be in violation of the anti-trust laws (see Par. 27 of Final Judgment). He did not become a Director of Hartford until 1926. Consequently, the Hartford-Empire agreement of June 30, 1916, the Hartford-Corning agreement of October 26, 1922, the Hartford-Owens agreement of April 9, 1924, and the Hartford-Thatcher agreements of December 8, 1920, were authorized and executed before he came on the Board. He did not vote for or otherwise authorize or approve either the March 25, 1933, agreement with Ball Brothers or the August 23, 1933, agreement with Lynch Corporation. He did not vote for or otherwise authorize or approve the July 1, 1932 (R. 1372; Ex. 1641, R. 3942, 14062-65), September 30, 1935, or October 1, 1935, agreements between Hartford, Owens, and Hazel-Atlas, nor any of the other agreements upon which the asserted conspiracy, etc., was found to be rested.

[42]R. 2895, 2903, 2980-1, 2992, 2993, 2994, 2999, 3000, 3002, 3023.

[43]R. 2992.

panies with which he was connected from the very beginning. As early as 1920 he protested against the restriction in his companies' licenses against the use of the Hartford feeder in making the ordinary common blown glass electric light shade.[44] Later he protested against Hocking being restricted from making pressed ware.[45] As a competing manufacturer he naturally objected to competitors sharing in Hartford's income, which consisted of royalties which his company and other licensees paid, and thus he was never told the extent of Owens' participation although he was a director of Hartford until 1937 and inquired about it.[46] As a matter of fact, he was never told and did not know that Hazel-Atlas had any participation therein until it was brought out at the T. N. E. C. hearing in December, 1938,[47] following which he testified he told Hartford "it was a crime such a thing like that existed and it ought to be changed and they (Hartford) ought to reduce their royalties."[48] A company of which he was president (General Glass Company) engaged in litigation with Hartford through the Court of Appeals for the Sixth Circuit opposing Hartford's claim that the Nivison-Weiskopf feeder infringed certain Hartford patents.[49]

He opposed the Hartford policy of requiring the use with Hartford feeders of Hartford or Lynch forming machines and as a matter of fact Hocking successfully used some of its own manufacture without being sued although Hartford complained that he (Collins) "defies H.-E. Co. on forming machine patents."[50] In 1930 he unsuccessfully attempted to obtain an extension of Hocking's license to per-

[44]Ex. 11, R. 679, 12386A; R. 2895.
[45]R. 2903.
[46]R. 2928.
[47]R. 2948, 3002.
[48]R. 3003.
[49]R. 3023; see 58 Fed. 2d 701.
[50]Ex. 369, R. 1199, 12936; R. 2993.

mit the manufacture of opal ware.[51] When Hartford advised him that Ball was complaining about General's packers jars being used for fruit jars notwithstanding General had no fruit jar license, he testified "we simply said we weren't making fruit jars, we were making another jar and if it was used for domestic fruit jar purposes it was no fault of ours" and "we went ahead" manufacturing packers jars.[52] Collins, notwithstanding the insistence of Smith of Hartford and Levis of Owens, refused to permit General to surrender to Hartford its unused license right to manufacture domestic fruit jars unless the Company was adequately compensated therefor as a result of which Levis of Owens wrote Smith of Hartford on March 27, 1933, "I think that Ike Collins was unreasonable and *we* probably were entitled to secure from Messrs. Ball the amount that was finally paid Collins for *we* were cleaning up this field for Ball rather than anyone else."[53] Moreover, Anchor Hocking (of which Collins was president) continued to manufacture fruit jars for domestic use under Capstan's license notwithstanding the claims and protest of both Hartford and Ball that it had no right to do so.[54] Collins was instrumental in selling Hazel the opal ware business of Monongah Glass Company in 1926 when Hazel and Hartford were at swords' points in their patent litigation.

The undisputed proof is that he consistently disagreed with the Hartford licensing policy and so expressed himself "practically every time I met him (Smith—president of Hartford)."[55] "I always felt we had too many restrictions in our license and we should be able to make anything that we wanted to make on our feeders regardless of what it was."[55] "I have always complained (to Mr. Smith) that

[51]R. 2944.
[52]R. 2980-1.
[53]Ex. 843, R. 2197, 13504-5.
[54]R. 2981.
[55]R. 3002.

the royalties were too high"[55] and ought to be reduced.[56] He complained and protested against the Corning exclusive right in heat resistant ware: "As I told you, we have always objected to restrictions which they had on heat resisting ware, * * * it put our company at a disadvantage. * * * They said they couldn't do anything about it."[57] Nevertheless he went ahead experimenting with the manufacture of heat resisting ware and obtained a trade-mark Fryrock.[58] Hartford and Corning threatened to sue his company and went so far as to obtain opinions from their counsel as to their rights in this regard.[59] Collins testified that he told Smith, "We were going to make heat resisting ware and if he didn't give us a license we would make it anyway"[60] and Anchor Hocking began the manufacture of such ware shortly following the filing of the complaint in this case.[61] Again, when he first learned the terms of the Hazel-Atlas contract in December, 1938, "I told them (Hartford) it was a crime such a thing like that existed." "I said it ought to be changed and they ought to reduce their royalties. * * * and they ought to be liberalized and there ought to be some changes made to put us on a competitive basis with our competitors."[62] As to the requirement that Hartford feeders be used only with Hartford or Lynch forming machines, Smith of Hartford wrote to Corning[57]—"Ike (Mr. Collins) * * * defies H-E Co. on forming machine patents."[63]

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[55]R. 3003.
[57]R. 2999-3000.
[58]Ex. 369, R. 1199, 12936; R. 2991.
[59]Exs. 5017-20, incl., R. 1460, 14715-21.
[60]R. 2993.
[61]R. 2999.
[62]R. 3003-4.
[63]The testimony of Mr. Collins as to his controversies with Hartford including the period from 1926 to the time he resigned as a director in December, 1937, is set forth at pages 2894-5, 2903, 2992-3007, 3010, 3023 of the record and stands uncontradicted.

(b) The Findings of Fact Do Not Support a Conclusion of Connection of Appellant Collins With the Asserted Conspiracy, Etc., Through Hartford.

Not only is the conclusion of requisite connection of Appellant Collins with the asserted conspiracy, etc., through action on his part while he was a director of the defendant Hartford-Empire wholly unsupported by proof, and not only is such conclusion contrary to the undisputed proof upon the subject, but the findings of fact and the cited evidence upon which they are purportedly rested furnish no basis for such conclusion.

Findings 15, 210 and 618[64]

These findings may be considered together, inasmuch as they are the only findings dealing with activities of Appellant Collins as a former director of Hartford.

> "15. Defendant Isaac J. Collins was simultaneously President of Hocking Glass Company and a Director of Hartford from May 4, 1926, until December 31, 1937. Collins as a Director of Hartford, participated in the direction and management of defendant Hartford, (Exs. 2005,[65] 1644,[66] 1154,[67]

[64]FF. 15, R. 7280; FF. 210, R. 7323; FF. 618, R. 7399.

[65]Exhibit 2005 (R. 6746, 14633-4) is the minutes of a meeting of the Hartford Board of Directors held on May 17, 1932, quoted and discussed at pages 33-34 *post*, and at which the president (F. G. Smith) merely reported on Hartford's recent victories in its litigation with Hazel-Atlas in the Third Circuit and with Nivison-Weiskopf and others in the Sixth Circuit, the possible damages collectible for infringement therein and the possible settlement thereof, and the possible acceptance by Hazel of a Hartford license as a result thereof. No corporate action was taken as respects anything except the declaration of a quarterly dividend. Moreover, this exhibit was introduced in evidence after appellant had rested at the conclusion of plaintiff's case in chief and hence is not a part of the record of the trial so far as he is concerned (see Assignment of Error III 3, R. 7908).

[66]Exhibit 1644 (R. 3942, 14067) is the minutes of a meeting of the Hartford Board of September 19, 1935, at which a committee was

160[68]), and approved, authorized, ordered and/or did some of the acts hereinafter found to have been performed by the defendant Hartford."

This finding correctly states that appellant was a director of Hartford from 1926 to 1937, and discloses that he had *not* been a director for two years prior to the filing of the complaint in this cause nor for nearly five years prior to the rendition of the final judgment.

The record proof as to the limited extent of Collins' participation "in the direction and management" of Hartford during the period of his directorship is set forth at pages 19 to 26, *supra*. The exhibits referred to in the finding are in no wise contradictory thereof and will be discussed shortly.

Moreover, as pointed out *supra* (page 14 *et seq.*), merely being a director and as such participating in the management and direction of a corporation is not sufficient in and of itself under the provisions of the anti-trust laws (Sec. 14, Clayton Act) to make such director a violator thereof through the violation of the corporation of

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appointed with regard to the revision of contracts with Owens and Hazel-Atlas. Appellant was not a member of that committee and took no part in the negotiations for or in the revision thereof, he did not vote to approve said agreements, and Finding 210 specifically finds that he never was advised as to the principal terms of those agreements until the T. N. E. C. hearing in 1938. Whatever may have been the purpose of the appointment of the committee referred to in Exhibit 1644, the effect was to exclude Collins from any participation in the revision of said agreements and to further postpone his acquiring any knowledge of the contents of the 1932 agreements so revised.

[67]Exhibit 1154 (R. 2948, 13771-2) discussed pages 34-35 *post* was a letter from Collins to a non-defendant with reference to matters in controversy between one of his companies (General) and Hartford in which he had represented his company, *not* Hartford.

[68]Exhibit 160 (R. 937, 12676) is a letter written by Smith as president of Hartford to Collins as president of Hocking as to whether one of Collins' companies would be interested in buying the business of the Brockway Company. Collins made no reply and did nothing about it (R. 2950).

which he is a director. The statute in terms requires that such director shall have "authorized, ordered or done any of the acts constituting in whole or in part, such violation * * *" on the part of the corporation. This is the essence of the conclusion set forth in the last clause of Finding No. 15. *It will be noted that there are no supporting references to the record in support of this conclusion, and the fact is,* as pointed out *supra, there is not a scintilla of evidence in the record supporting any such conclusion.*

The only transaction referred to in the findings which the court adjudged to be illegal in the conclusions of law[69] and with which Appellant Collins was found to have had any connection whatever was the 1932 agreements between Hazel-Atlas, Hartford and Owens, with respect to which he was found to have "participated in a discussion of plans" with respect thereto, although he was likewise expressly found to have had no knowledge of the provisions thereof[70] and he did not vote for or otherwise authorize, order or have anything to do with the making of said plans or agreements.[71] In view of this there is no escape from the conclusion that the adjudged unlawful acts of Hartford referred to in Finding No. 15 as those which Appellant Collins "authorized, ordered and/or did," consist of this single transaction in which he was found merely to have "participated in a discussion of plans." As a matter of fact, even this will be shown to be contrary to the record proof, but even if this were not so, manifestly such a "discussion of plans" falls considerably short of authorizing, ordering or doing an act of Hartford found to be in violation of the anti-trust laws, especially where it is undisputed that he was kept in ignorance of the "plans," *i.e.,* actual provisions of the agreements which were entered into by Hartford-Empire.

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[69]CL. 60, R. 7414; CL. 61, R. 7414; CL. 81, R. 7418.
[70]FF. 210, R. 7323; see also R. 2946-8.
[71]Ex. 1641, R. 3942, 14062-65.

The findings as to Appellant Collins in this connection are numbered 210[72] and 618[73] and are as follows:

> "210. I. J. Collins, as a director of Hartford in May, 1932, participated in a discussion of plans to get Hazel-Atlas to form a partnership with Hartford and Owens (Ex. 2005; see Exs. 1154, 1161). I. J. Collins, however, did not learn of the existence of the provision in the General License Agreement between Hartford and Hazel-Atlas (Ex. 142) whereby Hartford paid Hazel-Atlas one-third of its divisible income, until December, 1938 (R. 4196-4198)."
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> "618. Collins, as a director of Hartford in May, 1932, participated in a discussion of plans of the Board of Directors of Hartford to induce Hazel-Atlas to form a partnership with Hartford and Owens (Ex. 2005)."

Here are the undisputed record facts.

Hazel-Atlas and Owens both manufactured and sold lines of glassware which directly competed with those manufactured and sold by the companies in which Appellant Collins was interested.[74] One of the major items of cost in the manufacture of glassware was the royalties paid in connection with the use of the leased machinery. The result of the three-way agreement in 1932 between Hazel, Owens and Hartford whereby they were found to have become partners was to permit appellant's competitors, *viz.*, Hazel and Owens, to share in the royalties paid Hartford by its licensees, including Hocking and other companies in which Appellant Collins had his chief financial interest, thus giving the former a major competitive advantage over Collins' companies.[75] The provisions of the agreements which created "the partnership" referred to in the findings were those giving Hazel-Atlas and Owens

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[72]FF. 210, R. 7323.
[73]FF. 618, R. 7399.
[74]R. 2945, 2988.
[75]R. 3004.

a right so to participate in Hartford's income and the uncontradicted proof is that *even though appellant was a director of Hartford at the time, he was not told and never learned either of "the partnership" or the provisions of the agreements until it became public knowledge at the T. N. E. C. hearing in December, 1938,*[76] following which he told Hartford "it was a crime such a thing like that existed * * *."[77] He testified that he knew Hartford was negotiating with Hazel to settle the pending litigation[78] but that Mr. Smith (president of Hartford) told him that the settlement consisted of "Hazel paying Hartford a million dollars as back damages, *and a regular rate of royalty*" and that he assumed that was the whole arrangement until the T. N. E. C. hearing in 1938.[79] Not a single witness testified, and there is not a shred of proof that he in any way participated in the transaction. On the contrary, every witness, *viz.*, Smith of Hartford, Levis and Belknap of Owens, McNash of Hazel, etc., was asked time and again to name the persons who participated in the negotiations resulting in the 1932 agreement between Hazel, Owens and Hartford, and not one testified that appellant in any way participated therein. He testified positively that he did not.[80] As a matter of fact, he testified and Exhibit 872[81] (a letter from H. C. Laughlin of Anchor Hocking to W. J. Belknap of Hartford) shows that it was not until 1939 (seven years after the negotiations referred to) that Hartford first offered to show him the Owens-Hazel-Hartford agreements and explain the relationship established thereby, and even then "only in strict confidence," to which he

[76]R. 2948, 3002.
[77]R. 3003.
[78]R. 2946.
[79]R. 2948.
[80]R. 2947.
[81]R. 2244, 13531-2.

replied "if this is going to be in strict confidence they won't need to let me see it at all."[82]

The negotiations for Hartford were handled by a group of Hartford officers and directors, of which Collins was not a member.[83] He did not attend the meeting of the Board and did not vote or otherwise authorize, order or have anything to do with the making of the agreements.[84] He protested violently to Hartford when he first learned of it.[85] Not only was he not given any information about the Hazel-Owens-Hartford arrangement, but although he was a director of Hartford until 1937 he was never told the extent of Owens' participation in Hartford's income,[86] although that was in effect from 1924 forward. As a competing manufacturer he naturally objected to his competitors sharing in Hartford's income which consisted of royalties which his company and other licensees paid Hartford.

Not only does the uncontradicted proof fail to show as required by Section 14 of the Clayton Act that Appellant Collins as a director of Hartford otherwise "authorized, ordered" or had anything to do with the Hartford-Owens-Hazel-Atlas agreements of 1932, and not only is the uncontradicted proof to the contrary, but the Findings themselves are only that he "participated in a discussion of plans" (not that he authorized, ordered or did any acts found to be violative of the anti-trust acts) and Finding 210 expressly negatives his having even had knowledge of,[87] let alone a participation in the plan whereby Hazel became a partner through participation with Owens in Hartford's divisible income. Plainly, then, from the Findings them-

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[82]R. 3006-7.
[83]R. 906-7.
[84]Ex. 1641, R. 3942, 14062-65.
[85]R. 3003.
[86]R. 2928.
[87]"those having no knowledge of the conspiracy are not conspirators." *United States vs. Falcone*, 311 U. S. 205, 210.

selves he had no part in inducing Hazel-Atlas to form the "partnership" and this is the only transaction in the entire 628 Findings of Fact found in the Conclusions of Law to have been unlawful with which he is held to have even had the slightest connection. Thus the court's own Findings of Fact are insufficient to support the claim of connection of appellant with the asserted conspiracy, etc.

Moreover, the record citations in Findings 210 and 618 make it abundantly clear that he did not even participate in the discussion referred to in the Findings, let alone "authorize, order or do" anything unlawful. Exhibit 2005[88] referred to in the Findings is the minutes of the Meeting of the Board of Directors of Hartford held May 17, 1932. To show the tenuousness upon which the conclusion of Appellant's connection with the asserted conspiracy, etc., through having been an ex-director of Hartford is rested, we quote in full the pertinent part of the exhibit:

> "By invitation, W. J. Belknap reported to the Board in session his opinions as to what the recent court decisions in the Third Circuit and the Sixth Circuit meant, and what the chances were of our opponents asking for rehearing or taking an appeal to the U. S. Supreme Court.
>
> "Many questions were asked by the Directors in regard to the various legal technicalities. It was the general consensus of opinion that Hartford should ask for a rehearing in the Cincinnati case."
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> * * * * *
>
> "GENERAL DISCUSSION
>
> "F. G. Smith then made a general statement as regards possible damages collectible from infringing feeders. He also went into some detail as regards terms covering a possible settlement with the Hazel-Atlas Glass Company and just what the Hazel-Atlas

[88]R. 6746, 14633-4. This exhibit was erroneously considered by the court below in connection with appellant since it was not offered or received in evidence until after appellant had rested at the conclusion of plaintiff's case in chief. (See Assignments of Error III, 3, R. 7908.)

Glass Company might demand if they desired to take a license from Hartford.

"Mr. Smith also referred to Hartford's policy as regards new licensees and such changes as would be required in the Hartford-Owens contract."

This, then, was the "discussion of plans" to get Hazel to form a partnership with Hartford referred to in the Findings. Hartford had just won its litigation with Hazel, who had been judicially determined to be an infringer,[89] as had Nivison-Weiskopf and others.[90] The exhibit says Mr. Smith's report had to do with "possible damages collectible from infringing feeders" and the terms of the possible settlement thereof with Hazel, and of what Hazel might desire in the way of "a license from Hartford." The exhibit gives no intimation of any discussion of any "partnership" or participation in Hartford's income, and there was none, *for the uncontradicted record proof is that Collins, who attended the meeting, was told by Smith of Hartford some two months later that the settlement with Hazel involved payment of $1,000,000 damages for infringement of Hartford patents and a regular rate of royalty and nothing more, and that he never learned differently until 1938 at the T. N. E. C. hearing.*[91]

Nor does this unsupported claim of connection receive any support from the vague and wholly ambiguous portion of a sentence contained in Ex. 1154[92] cited in Finding 210. This exhibit was a letter from Mr. Collins to a non-defendant who was the president of a paper box company, in

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[89] 59 Fed. 2d 399.

[90] 58 Fed. 2d 701.

[91] R. 2948. Moreover, there is no reference in the exhibit to any "participation" in the meeting by Collins by way of discussion or otherwise; there is no reference to any "plans" nor to any efforts "to get" or "induce" Hazel-Atlas "to form a partnership." Obviously Findings 210 and 618 completely distort the exhibit in the face of uncontradicted evidence flatly repelling such distortion.

[92] R. 2948, 13771-2.

which Mr. Collins stated that he "had been dated up the greater part of my time with the Hartford-Empire Patent situation." According to the uncontradicted evidence, the "Hartford-Empire patent situation" therein referred to was the various matters *between General Glass* (of which Collins was President) on the one hand *and Hartford* on the other, referred to as "undisposed of" in Exhibit AH-5124,[93] *viz.*, the General Glass Company Consolidated Feeder Former, Lehr, etc., license agreement from Hartford, the machinery to be licensed and leased by Hartford to General Glass thereunder, and the negotiations for the settlement of the adjudicated liability of Nivison-Weiskopf to Hartford for infringement damages, for which General was liable, all of which were in the process of being disposed of at that time, and the formal settlement agreements of which were executed shortly thereafter and Mr. Collins, the author of the letter, so testified.[94]

The only other exhibit referred to in these Findings (except the Hazel-Hartford agreement itself, which does not bear upon this point) is Exhibit 1161,[95] which is a letter *to* Collins from a Mr. Mandeville under date of September 12, 1932 (almost two months after the Hazel-Hartford-Owens contracts had been executed) in which Mandeville, who was neither an officer nor directer of Hartford enclosed a "Memorandum on Hazel-Atlas which may be of interest to you." There is not a scintilla of proof that this memorandum related in any way to the agreements *theretofore* entered into between Hazel, Hartford and Owens.

The utter and complete weakness of the entire case for this Appellant's asserted connection with the alleged conspiracy, etc., is fairly and aptly illustrated by the wholly unfounded inference required to be drawn from these ex-

[93]R. 3022, 14828.
[94]R. 2949.
[95]R. 2975, 13782.

hibits and the Finding itself in the face of the uncontradicted proof flatly repelling the possibility of any such inference.

The only other supporting reference to the record cited in the Finding is a portion of the testimony of Appellant[96] as to his lack of knowledge of the Hazel-Hartford-Owens arrangement. For the convenience of the court we set forth this testimony in full in the margin.[97] We merely ask the

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[96]R. 3002-3.

[97]Q. Did you say anything else about royalties too? A. I have always complained that the royalties were too high.

Q. Who did you tell that to? A. Mr. Smith.

Q. Did you ever have an occasion to talk to Mr. Smith between December, 1937, and December, 1939, in regard to the participation by Hazel-Atlas in the royalties of Hartford-Empire? A. Since when?

Q. Between December, 1937, and December, 1939? A. Is that after the T. N. E. C.?

Q. T. N. E. C. was December, 1938? A. I never discussed the royalties with Mr. Smith about Hazel-Atlas because I did not know anything about it until after the T. N. E. C.

Q. That was a year between that time and the time we filed the complaint. I am limiting myself to that period of time. Did you talk to Mr. Smith about the royalties received from Hazel-Atlas? A. I never knew.

Q. I mean after you found out? A. You bet.

Q. What did you say to him? A. I can't recollect the conversation.

Q. Was there more than one conference? A. Many conferences.

Q. In that one-year period? (fol. 5486.) A. Sure.

Q. Where were they? A. Mostly in New York.

Q. When you say many, do you mean more than five? A. Probably one every month, every time I went to New York when he was there.

Q. Tell us your best recollection, was anybody else present? A. I think there was from time to time.

Q. Who from Hartford? A. Bill Belknap was present at one time.

Q. Anybody else? A. I don't know anybody else.

Q. Who from your company? A. I think Mr. Laughlin.

Q. What did they say? A. I can't tell you the exact conversation but it was directed towards getting a lower rate of royalty. I thought they ought to reduce the royalty.

Q. Did you say anything to them about the fact that Hazel-

court to read that testimony having in mind that it is actually cited as the record support of a finding upon the basis of which it is claimed that appellant was in some way connected with the asserted conspiracy, etc., through this transaction of which the testimony referred to in the Finding shows he had no knowledge until over six years after it transpired and more than a year after he had resigned as a director of Hartford.

Findings 23 and 617[98]

> "23. Defendants Isaac J. Collins, J. D. Dilworth, W. V. Fisher and T. C. Fulton, have been and are officers or directors, and have participated and now participate in the direction and management of defendant Anchor Hocking."
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> "617. Isaac J. Collins was president of Hocking at all times since its organization in 1905 until 1938. He has been president of Anchor Hocking from 1938 to date. He was a director of Hartford from May 4, 1926, until February, 1938. He was president and director of General from 1931 to 1937. He has been on the Statistical Committee of the Glass Container Association from 1931 to date."

These Findings plainly deal with Appellant Collins' relationship as an officer and director of *Anchor Hocking* and subsidiary and predecessor companies (Hocking, General, etc.) and his participation in the direction and management thereof as such officer and director. As noted *supra*, Anchor Hocking was absolved from any connection with the asserted conspiracy, etc., and none of the transactions with which Anchor Hocking or its predecessors or

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Atlas was participating in the divisible income? A. I certainly did.

Q. What did you say? A. I told them it was a crime such a thing like that existed.

Q. What else did you say? A. I said it ought to be changed and they ought to reduce their royalties.

[98]FF. 23, R. 7282; FF. 617, R. 7399.

subsidiaries were connected were adjudged to have been in violation of the anti-trust laws. In so far as Collins' membership on the Statistical Committee of Glass Container Association is concerned, neither the complaint, the Findings of Fact, the Conclusions of Law nor the judgment purport to claim, find or hold that Collins became connected with or participated in the asserted conspiracy, etc., either by reason of his membership upon said committee or otherwise through said Association. On the contrary, the decision of the court below as to this connection and participation is squarely rested on his asserted "connection with Hartford." Moreover, there is not a shred of evidence nor any Finding that Collins "authorized, ordered or did" any of the acts of said Association adjudicated to have been violative of the anti-trust laws. Consequently, these findings require no discussion, and by no possibility could they furnish any basis for the conclusion that Appellant Collins was in some wise connected with the asserted conspiracy, etc., either through having been "associated with Hartford-Empire" or otherwise.

Finding No. 620[99]

> "620. As president of General and while a director of Hartford, Collins (1) negotiated the settlement with Hartford of its claims for infringement damages against Nivison-Weiskopf and (2) with the presidents of Owens, Hazel-Atlas and Hartford, he negotiated the transaction by which General surrendered its fruit jar license rights in exchange for $100,000."

By no possibility can it be tenably claimed that this Finding furnishes the basis for the requisite connection of

[99]R. 7399. FF. 375, R. 7356, also relates to the sale to Hartford by General of its unused fruit jar license rights referred to in Finding 620, adds nothing thereto and furnishes no basis for the requisite connection of appellant for the same reasons discussed in connection therewith.

Appellant with the asserted conspiracy, etc., through having *as a director of Hartford* "authorized, ordered or done any of the acts, etc." of Hartford adjudged to have been violative of the anti-trust laws for several reasons.

First, in both of the transactions referred to in the Finding, as appears therefrom and as the fact was, *Appellant was representing General (not Hartford)* in the negotiation of existing controversies *with Hartford* in which Hartford was represented by one or more of its officers. Manifestly, in such circumstances it could not be claimed that his participation amounted to authorizing, ordering or doing any act of or for *Hartford.*

Second, neither of these transactions nor the resulting agreements were adjudged to have been in violation of the anti-trust laws, either standing alone or as being in furtherance of the asserted conspiracy, etc., in combination with other transactions adjudged to be unlawful or otherwise. Hence even had appellant represented Hartford therein, which he did not, they could furnish no basis for holding him to have thus become connected with the asserted conspiracy, etc.

Third, General Glass Company, whom Appellant Collins represented in the transactions, was a subsidiary of Hocking, both of whom were subsequently absorbed by Anchor Hocking. It was urged by plaintiff below that through these transactions Anchor Hocking and associated officer and director defendants became connected with the asserted conspiracy, etc. This claim was rejected by the dismissal of Anchor Hocking and the other associated officer and director defendants.

This brings us to the seventh and final Finding of Fact which seems in any wise pertinent to the adjudicated connection upon which the judgment against this appellant is rested. Like the others, it also patently fails to furnish any basis for the conclusion that appellant became connected

with the asserted conspiracy, etc., through the defendant Hartford.

Finding 619[100]

> "619. As a stockholder of Hartford he now owns and has owned for some years, 10,000 shares of the common stock of Hartford (Ex. 1583)."[101]

This Finding is correct. It is likewise true, as shown by Ex. 1583,[101] that such holdings represent only approximately 2% of Hartford's issued and outstanding common stock. Hartford had several hundred stockholders,[101] many of whom own much larger holdings of Hartford stock than appellant, and yet none of them are joined as defendants herein by reason thereof or charged with having thus been tainted with the alleged wrongdoing of the company in which they happen to hold stock. There is not a scintilla of evidence that appellant even so much as voted said stock in favor of any of the transactions found by the court below to have been violative of the law, let alone "authorized, ordered or did any" of said acts as such stockholder, and the complete lack of any reasonable or justifiable basis for having held this appellant to have been connected with the asserted conspiracy, etc., is well illustrated by this manifestly tenuous claim.

The provisions of the anti-trust laws do not even purport to impose liability upon a mere stockholder for violation thereof by the company in which he happens to own stock, nor is a mere stockholder deemed to have violated the anti-trust laws through the violation thereof by the company in which he owns stock.[102] Section 14 of the Clayton Act does not even so much as mention a stockholder.

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[100] R. 7399.

[101] Ex. 1583, R. 3904, 8095-8106D.

[102] *U. S. vs. E. I. DuPont de Nemours & Co.*, 188 Fed. 127 (Del., 1911) Syl. 2.

Hence while appellant does own stock in Hartford-Empire, that could not and does not furnish any basis either for concluding that he thus became connected with the asserted conspiracy, etc., or for imputing to him liability for any violation of the anti-trust laws which may have been committed by Hartford.

Conclusion

Since neither the record nor the findings show that this appellant ever became connected with or participated in the asserted conspiracy, etc., either through having "authorized, ordered or done any of the acts," etc., of the defendant Hartford, or of any other defendant, adjudged to have been violative of the anti-trust laws, or otherwise, it is submitted that the court below erred prejudicially in failing to sustain appellant's motion for dismissal along with Anchor Hocking and its other associated defendant officers and directors, and in finding and adjudging to the contrary and in entering final judgment herein against appellant.

Point 2

Appellant Collins Resigned as a Director of Hartford in December, 1937, Long Prior to the T. N. E. C. Hearing and Long Prior to and for Reasons Wholly Disconnected With Any Threat or Probability That This Case Would Be Filed, There Is NO Evidence or Finding of Any Reasonable Likelihood of His Resuming Same, and He Should have been Dismissed for This Additional Reason.[1]

Equity jurisdiction in a case such as this is defined in Section 4 of the Sherman Act.[2] This section, which in terms

[1]The Assignments of Error relied upon in connection with Point 2 are numbers I 1, 2, 3, D (R. 7900-2); II 6 (R. 7905).

[2]15 U. S. C. A., Sec. 4.

confers jurisdiction "*to prevent and restrain* violations" of this act provides that the proceedings "may be by way of petition setting forth the case and praying *that such violation shall be enjoined or otherwise prohibited.*"

It is the plain meaning of these statutory words that the courts of equity are empowered to restrain present wrongs or prevent threatened ones. It has long been settled that an injunction cannot properly issue as punishment for a past violation of the Sherman Act or of any other Act of Congress. The sole function of an injunction is to afford preventive relief, not to redress alleged wrongs already committed.[3]

The principles governing equitable relief are no different under the Sherman Act than elsewhere.[4]

The power to enjoin conduct or practices adjudged to be illegal under the act is a power to enjoin conditions, practices or conduct either presently existing or employed or threatened. It has no application to conduct or practices or a condition of five years ago, or even of yesterday, unless the circumstances of such past act or practice or condition are such as to convince the court that there is such danger of repetition in the future that he should enjoin or otherwise restrain such possibility. Hence where, as here, the condition or practice or conduct of which complaint is made has been voluntarily abandoned and no longer exists, and where, as here, the danger of renewal or recurrence has not been shown and cannot properly be inferred, this court has squarely held that there is no justification for the issuance of an injunction.[5]

As pointed out in connection with Point 1 *supra*, Ap-

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[3] *Lacassagne vs. Chapuis*, 144 U. S. 119 (1892).

[4] *Appalachian Coals, Inc., vs. U. S.*, 288 U. S. 344, 377 (1933).

[5] *United States vs. United States Steel Corp.*, 251 U. S. 417, 444-5 (1920); *Industrial Association vs. United States*, 268 U. S. 64, 84 (1925); *Standard Oil Company vs. United States*, 283 U. S. 163, 181-2 (1931).

pellant Collins was in almost continuous disagreement with Hartford throughout the entire period in which he served as a director, and he finally decided to resign, which he did in December, 1937.[6] This was two years prior to the filing of this suit (December 11, 1939) and long prior to the time that there was any threat or probability that such a suit would be filed. It was a year prior to the T. N. E. C. hearings (December, 1938.) The reasons for the resignation were wholly disconnected with this case.[7] The government made no claim to the contrary below. In such circumstances under the authorities, even if formerly responsible for past acts and practices of Hartford, which the record irrefutably shows he was not, he cannot now be so charged or enjoined, having voluntarily abandoned the position and completely terminated and severed the relationship from which such adjudged responsibility stemmed and upon the basis of which the judgment against him herein is rested and which position and relationship he has never resumed, and there is no evidence of any reasonable likelihood of his resuming the same without regard to this judgment.[8]

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[6]FF. 15, R. 7280.

[7]R. 3001.

[8]*United States vs. Sugar Institute,* 15 F. Supp. 877 (D. C. S. D. N. Y., 1934), mod. and aff'd *Sugar Institute vs. United States,* 297 U. S. 553 (1936). was an action against an alleged conspiracy in restraint of trade in sugar. The court dismissed two of the individual defendants as follows (15 F. Supp. 907): "They have long since, though after suit was filed, joined a newly established sugar brokerage firm and since then have apparently had no other active connection with the industry. Brokers had not been made defendants in this proceeding. Assuming that the petition would have been sustained as against brokers jointly with the members of the Institute, I cannot deem this alone a sufficient reason now to retain them in the case and thus to make them alone of the many brokers defendants therein. Regardless of the situation when suit was filed, there seems now to be no impending threat by Harper or, with some little doubt, by Stone, of a renewal of the wrongs with which, in a capacity other than that of brokers, they were originally charged. As to these two defendants, the petition will be dismissed without prejudice."

Moreover, the provisions of the judgment with respect to Hartford-Empire itself completely obviates the necessity for any injunction against appellant even if there was any evidence of a likelihood of his resuming as a director thereof, which there is not.

The rationale of this principle enunciated by the decisions of this court *supra* is particularly compelling where, as here, there is a finding of but a single "participation in a discussion of plans," there is not a single instance in which appellant authorized, ordered or did any of the acts of Hartford adjudged to have been violative of the law, and with it all a record of an almost continuous controversy with the company's policies of which complaint is herein made, throughout the entire period of his association as a director, culminating in his resignation.

Point 3

The Provisions of the Final Judgment as to Appellant Collins Are Not Only Wholly Unsupported By Any Evidence or Findings But Are Unnecessarily Harsh and Severe, Impose Purely Punitive Restraints Upon Him in His Personal Capacity, and Are Unwarranted and Beyond the Power of the Court Under Section 4 of the Sherman Act.[1]

As pointed out *supra*, it is our earnest belief and considered judgment that neither the evidence nor the findings of the court below in any wise establish that appellant ever had or now has any connection with or participation in the asserted conspiracies, etc., either through the defendant Hartford-Empire Company as a former director or otherwise. The basic soundness of that position and the imperative necessity that this court in justice to the appellant

[1]The Assignments of Error relied upon in connection with Point 3 are Numbers IV 3 A, B, C, D and E (1), (2), (3), (4), (5), (6) (a) and (b); 4, 5 and 6, R. 7909-12.

rectify the manifest error of the lower court in refusing to dismiss him and in entering the judgment against him is further demonstrated by a consideration of the provisions of the final judgment.

The scope and character of each of the provisions of the final judgment as framed by the lower court and the objections inhering therein will be treated in great detail in the briefs of the appellants in the other appeals. In the interest of brevity and to diminish the burden imposed upon the court by the briefs of the many appellants, we shall confine this section of the brief to a consideration of those paragraphs of the judgment which are particularly onerous to this appellant. In so doing we are not to be taken as in any wise waiving the numerous objections inhering in the various provisions of the judgment not specifically discussed, each of which is specifically set forth and assigned as errors in the Assignments of Error herein.[1]

While perhaps unnecessary, we again call to the court's attention and ask that in such consideration it be borne in mind that this judgment is, so far as this appellant is concerned, in terms and necessarily rested solely (and as we believe we have shown, erroneously) upon the conclusion that more than eleven years ago, when he was a director of Hartford, he became, through a single transaction of said company, connected with the asserted conspiracy, etc., *and now is* a member thereof notwithstanding that he is not so charged in the complaint, that the record proof fails to show that he ever ordered, authorized or had any part in that or any other transaction adjudged to have been unlawful, and that he voluntarily resigned as such director some two years before the commencement of this action and almost five years before the entry of said final judgment.

The Permissible Limits of the Judgment as Declared by the Provisions of the Anti-trust Laws and the Decisions of This Court.

It should perhaps be said at the outset that it is, of course, recognized that a court has a broad discretion in the framing of a judgment under Section 4 of the Sherman Act "to prevent and restrain" continuance or resumption of adjudicated violations of the anti-trust laws. Nevertheless, such discretion is neither unlimited nor undefined. The statute itself in terms limits the proceeding and consequently the judgment to one calculated "to prevent and restrain" violations established therein. And the decisions of this court have staked out with considerable clarity the permissible boundaries within which the pattern of any such judgment must be confined.

Thus it is established that the "purpose of the Sherman Anti-trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive and coercive influences of monopolistic endeavor."[2] These are the four corners by which the remedy in a given case must be measured. But "one of the fundamental purposes of the statute is to protect, not destroy rights of property"[3] and hence a judgment in an anti-trust case must evidence "a proper regard for the vast interests of private property."[4]

On the other hand, the remedy is by way of injunction, the sole function of which is "to prevent and restrain," not to punish past violations or redress wrongs already

[2] *Appalachian Coals, Inc., vs. United States,* 288 U. S. 344, 360 (1933).
[3] *Standard Oil Co. vs. United States,* 221 U. S. 1, 78 (1911).
[4] *United States vs. American Tobacco Co.,* 221 U. S. 106, 185 (1911).

committed, it looks to the future, not to the past, and the principles governing the same are no different under the Sherman Act than in any other action for injunctive relief.[5] The judgment must not be punitive in character "As penalties which are not authorized by law may not be inflicted by judicial authority * * *."[6] And by Section 19 of the Clayton Act[7] the injunction must "set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other documents, the act or acts sought to be restrained." A general injunction in an anti-trust suit is intolerable because "The defendants ought to be informed as accurately as the case permits what they are forbidden to do,"[8] and because such a decree amounts to "a sweeping injunction to obey the law" and "We equally are bound by the first principles of justice not to sanction a decree so vague as to put the whole conduct of the defendant's business at the peril of a summons for contempt. We cannot issue a general injunction against all possible breaches of the law."[8] Such a general injunction "would be violative of the most elementary principles of justice."[9]

Probably the most firmly established of the delimiting guideposts in a case such as this is the principle that the remedy embodied in the judgment must not go further than is reasonably required *to* efficaciously *prevent the continuance or resumption* by a defendant *of the unlawful acts or devices* or acts or devices of the same type or class as those *which said defendant has been found to have committed or employed or the future commission or em-*

[5]See Point 2, p. 41, *supra*, and cases there cited.
[6]*Standard Oil Co. vs. United States*, 221 U. S. 1, 77 (1911).
[7]28 U. S. C. A., Sec. 383.
[8]*Swift vs. United States*, 196 U. S. 375, 401, 404 (1905).
[9]*New York, New Haven & Hartford R. R. Co. vs. Interstate Commerce Commission*, 200 U. S. 361, 404.

ployment of which, unless enjoined, *may be fairly anticipated* from defendant's conduct in the past.[10]

Thus this court as recently as 1941 said:[11]

> "A federal court has broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future, unless enjoined, may fairly be anticipated from defendant's conduct in the past. But the mere fact that a court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged. *This Court will strike from an injunction decree restraints upon the commission of unlawful acts which are thus dissociated from those which a defendant has committed. Swift & Co. vs. United States*, 196 U. S. 375; *New York, N. H. & H. R. Co. vs. Interstate Commerce Commission*, 200 U. S. 361, 404, * * *."

Hence the relief to be granted as against a particular defendant as embodied in the judgment must be measured by and have some reasonable relation to the existing or threatened unlawful acts and practices of said defendant as established by the proof and determined by the trial court. We shall apply the yardstick of these established principles to the provisions of this judgment as such provisions apply to Appellant Collins.

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[10] *Standard Oil Co. vs. United States, supra; United States vs. American Tobacco Co.*, 221 U. S. 106, 185 (1911); *Warner & Co. vs. Lilly & Co.*, 265 U. S. 526, 532 (1924); *Local 167 vs. United States*, 291 U. S. 293, 299 (1934); *Ethyl Gasoline Corp. vs. United States*, 309 U. S. 436, 461 (1940); *National Labor Relations Board vs. Express Publishing Co.*, 312 U. S. 426, 435 (1941).

[11] *National Labor Relations Board vs. Express Publishing Co.*, 312 U. S. 426, 435 (1941).

Paragraphs 3 to 9 of Judgment

The only transaction found in the conclusions of law to have been unlawful with which appellant was found to have had even the slightest connection was a participation "in a discussion of plans" with respect to the 1932 agreements between Hazel, Hartford and Owens and of the provisions of which he was likewise found to have had no knowledge.[12] Not another act of his, not another transaction with which he had even the slightest connection, was adjudged by the conclusions of law to have been unlawful. And yet every provision of this judgment runs against him personally, and paragraphs 3 through 8 thereof purport to find him to have violated the anti-trust laws in the same respects as every other defendant, corporate or individual, and based thereon paragraph 9[13] contains a broad, sweeping injunction against him the only limitation upon which is a reference, in derogation of Section 19 of the Clayton

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[12]FF. 210, R. 7323; R. 2946-8; see Point 1, p. 29 *et seq., supra.*

[13]"9. The defendants Hartford-Empire Company, and the individual defendants associated therewith; Corning Glass Works, and the individual defendants associated therewith; Empire Machine Company, and the individual defendants associated therewith; Owens-Illinois Glass Company, and the individual defendants associated therewith; Hazel-Atlas Glass Company, and the individual defendants associated therewith; Thatcher Manufacturing Company, and the individual defendants associated therewith; Lynch Corporation, and the individual defendants associated therewith; Ball Brothers Company, and the individual defendants associated therewith; Glass Container Association of America, Inc., and the individual defendants associated therewith; and the defendants J. D. Dilworth, W. V. Fisher, T. C. Fulton, and G. F. Rieman; and each of them, and all persons and corporations acting and claiming to act on behalf of them, *be and they hereby are enjoined from monopolising, attempting to monopolize, combining and conspiring to monopolize, or agreeing, combining, or conspiring to restrain trade as charged in the complaint herein in violation of the Sherman Anti-trust Act and the Clayton Act and be and they hereby are enjoined from engaging in or participating in practices, contracts, relationships, or understandings, or claiming any rights thereunder, having a tendency to continue or revive any of the aforesaid violations of the Sherman Anti-trust Act and the Clayton Act.*"

Act[14] to the charges "in the complaint herein" without any other description, detailed or otherwise, of the acts thus enjoined. The effect of this provision is, contrary to the principles enunciated by this court and discussed *supra*, to broadly enjoin appellant to obey the statute requiring him to search the complaint, the findings and the conclusions of law and determine therefrom at his peril what agreements, acts and practices the court found to have been violative of the law, and having so determined, to so gauge his conduct in the future at the peril of contempt proceedings, as that by no possibility could it be claimed such conduct had even "a tendency to continue or revive" any of such violations.

It is submitted that "the first principles of justice" preclude this court from sanctioning a judgment which sets up a standard of conduct such as is imposed by paragraph 9 of the judgment and which is so vague, indefinite and uncertain as to place appellant's whole conduct, business and personal, "at the peril of a summons for contempt."

Moreover, the paragraph is wholly unnecessary in view of the other broad provisions of the judgment whereby the court retains jurisdiction "to bring about a situation in harmony with the federal anti-trust laws."[15]

Paragraphs 33 and 35 of Judgment

From appellant's individual standpoint the impact of the provisions of these paragraphs and of paragraph 36 discussed *post* is probably the most intolerable and severe (and, as we believe the record shows, entirely unnecessarily so) of any of the paragraphs in the entire judgment. Paragraphs 21-23 and 25 of the judgment relate to the manufac-

[14]28 U. S. C. A., Sec. 383, printed in full in Appendix, p. 67, *post*.

[15]Par. 57(a) of Final Judgment (R. 7691).

ture and distribution of glassware machinery; paragraphs 24, 26, 29, 51-54 relate to patents and the acquisition thereof and licensing thereunder, and while most stringent and defective as to the other appellants in the respects pointed out by their briefs, such provisions should at all events be made inapplicable to Collins, who, as shown by the uncontradicted proof, has never engaged in the business of holding or acquiring patents relating to glass making machinery or otherwise or licensing others thereunder, nor has he ever manufactured and licensed, leased, or distributed glass making machinery. Even though the impact of those provisions upon him, although definitely circumscribing his future conduct, is not as presently onerous as other provisions, the very fact that he has never so engaged in business or committed any of the unlawful acts found by the court to have been committed in connection therewith, establishes the erroneous character of such restraints, at least as to him, and requires that such provisions be stricken from the judgment in so far as any application to him is concerned on the principle announced by this court in *National Labor Relations Board vs. Express Publishing Co.*[16]

The purport of paragraphs 33 and 35 is that appellant (and others) as an individual is perpetually *"enjoined from holding or controlling,* directly or indirectly, or through corporations, agents, trustees, representatives or nominees, *any of the* * * * *capital stock, bonds or other evidences of indebtedness*[17] of more than one corporation engaged either in the manufacture and sale of glassware or in the manufacture or distribution of machinery used in

[16]*National Labor Relations Board vs. Express Publishing Co.*, 312 U. S. 426, 435.

[17]This paragraph does not even conform to the opinion of the court below in which the court stated the proposed injunction would be against "holding * * * or owning *stock* in more than one concern in the industry * * *." (Page 159 of Record Volume containing opinion.)

the manufacture of glassware, or in both," and "from holding at the same time an office or directorship in more than one" such corporation.

The complete inappropriateness of these provisions and their evident transcendency of the established boundaries of the judgment appropriate to this case are made manifest by recalling the precise nature of the case. This is an asserted patent and glass making machinery monopoly and conspiracy that is here principally involved.[18] The manufacture and sale of glassware is only incidentally involved and then only through and solely by reason of the system of licensing under said patents and of leasing said machinery,[18] through which system the manufacture and sale of glassware is claimed to have been restrained. Hence provisions which insure the disestablishment of such system of licensing and leasing, and adequately deal with the patent and glass making machinery phases of the asserted conspiracy, etc., as paragraphs 21-23, 24-26, 29 and 51-54 assuredly do, render wholly unnecessary and entirely inappropriate any provisions such as are contained in paragraphs 33, 35 and 36, in so far as the relationship of individuals or, for that matter of corporate defendants, with companies engaged in the manufacture of glassware is concerned.

The provisions of paragraphs 33, 35 and 36 would only be appropriate or proper where the conspiracy, etc., had been brought about, maintained and furthered through interlocking stockholders, officers and directors, or by the acquisition of assets or stock by patent and glass making machinery companies on the one hand of glass manufacturing companies on the other, or by the domination and control of glass manufacturing companies by patent and glass making machinery companies through stock ownership and interlocking directors and officers. Where monop-

[18]Bill of Particulars, R. 99, 117.

olies are established or conspiracies to restrain trade are carried out by such acquisition of competing businesses or through domination or control thereof by interlocking officers, directors or stockholders, provisions such as these (not as to bonds or other evidences of indebtedness, however) against the same are undoubtedly proper where limited to the defendants involved and their relationship with each other. Such is not this case, and the asserted conspiracy, etc., here involved came about in no such way. The complaint makes no such charge and the record contains no such proof. Hence the provisions against ownership of stock in a company engaged in the manufacture of glassware and one engaged in the holding of patents or in the manufacture of glass making machinery are wholly unwarranted by the proof and constitute restraints wholly "disassociated from those which a (this) defendant has committed" and consequently should be deleted, or at least in terms made inapplicable to this appellant.

Moreover, Appellant Collins owns only 10,000 shares out of approximately 472,100 shares issued and outstanding of the common stock of the defendant Hartford-Empire. By no possibility could it be claimed that he was anything but a minority stockholder since this constitutes only about 2% of said stock. According to the record,[19] for all practical purposes undoubted control (approximately 44% of the outstanding stock) is in the hands of the former Empire Machine stockholders. Appellant's stock was lawfully and properly acquired by him in the regular course of business and there is no finding or judgment to the contrary. He is neither an officer nor director of any of the corporate defendants. Nor does Collins own any securities of nor is he an officer or director of any glassware manufacturing company except only Anchor Hocking, which has been expressly absolved from any connection

[19]Ex. 1583, R. 3904, 8095-8106D; FF. 50, R. 7288; FF. 56, R. 7289-90.

with the adjudicated conspiracy. No conduct or practice of the appellant violative of the anti-trust laws has been found to inhere either in his acquisition or ownership of stock of Hartford or his ownership or acquisition of stock in Anchor Hocking. The two companies are not in competition with each other. The conduct of appellant found to have been violative of the law was necessarily as a former director, not as a stockholder of Hartford. That position he resigned in 1937 and it is not, and indeed it could not be even claimed, that he has since engaged in any unlawful practices or conduct.

Laying these facts up against the yardstick laid down in the cases cited and the principles discussed *supra*, there is and can be no claimed "presently existing" violations of the act to be enjoined as to this appellant.

What, then, of threatened or reasonably anticipated future violations? He has not been a director of Hartford for over six years, and there is no evidence of any reasonable likelihood of his resuming as such. He has never been an officer of Hartford or an officer or director of any other defendant. Passing that, we assume that the only possible theory upon which the requisite anticipation of threatened future violation of the law by appellant could be reasonably rested, particularly in so far as his ownership of Hartford stock is concerned, would be that so long as he owned Hartford stock he might again be elected a director. Even so, the mandatory provision of the judgment requiring him to divest himself either of his Hartford or Anchor Hocking stock far exceeds the bounds of relief necessary to efficaciously preclude any such anticipated future violations of the act. Such an objective is accomplished by simply enjoining him from again serving as an officer or director *of Hartford*, which would at the same time give due consideration to his property rights. This latter is particularly imperative where, as here, his

acquisition of stock was *bona fide* and in no sense found to have had any connection whatever with the asserted conspiracy, etc.

Not only are paragraphs 33 and 35 wholly unwarranted and inappropriate for the reasons heretofore noted, but the provisions of the judgment as to the company (Hartford) itself are manifestly sufficiently stringent and prohibitive in character and of sufficient breadth as to completely insure against continuance or resumption of any conduct or practices found to be unlawful or of that type or class, regardless of who the stockholders, officers or directors may be, who of course are at all times bound by the provisions of the judgment as to Hartford. Hence where, as here, all that can possibly be involved as a basis for relief is the mere possibility of an ex-director again becoming such, or a minority stockholder exercising his franchise, it is, we submit, wholly unnecessary and unwarranted that there should be any provisions of the judgment in any wise relating to the stock presently owned by him either in the defendant Hartford or in the non-competing non-defendant Anchor Hocking.

However, these provisions of the judgment not only require appellant to divest himself of stock already owned either in the defendant Hartford or the dismissed Anchor Hocking, but they go to further unprecedented lengths and preclude in perpetuity the holding by appellant of any of the capital stock, bonds, or other evidences of indebtedness of more than one corporation engaged either in the manufacture and sale of glassware or in the manufacture or distribution of glass making machinery, defendants and non-defendants alike. According to the opinion of the court,[20] the purpose of this phase of the proposed relief is not punitive, as indeed it could not properly be, but rather

[20]Page 159 of Record Volume containing opinion of court below.

to effectively preclude in the public interest all possibility of "unlawful control and domination of the industry." Not only is there no basis in the record for this phase of the relief, since the alleged existing "unlawful control and domination" referred to came about, if at all, through patent control rather than through any acquisition of the stock or assets of glass manufacturing companies, but also the purport and effect of the relief is in no sense limited to any such purpose, for the prohibition applies to any such holding regardless of how small it may be and irrespective of whether the manufacturer of such machinery or glassware is a major or a minor part of such corporation's business or whether such corporations are in fact competing companies. The paragraph would prevent appellant from holding for investment any bonds or other evidences of indebtedness, as well as stock, of any corporation which either now or in the future might decide to engage in the manufacture of glassware, however insignificant a part of its aggregate business such activities might be, and a defendant might very well unwittingly become in contempt because a corporation whose securities he held, without his knowledge, commenced some insignificant manufacture and sale of some type of glassware.

The provisions of these paragraphs of the judgment exceed the bounds of the standards set up in the anti-trust laws themselves, for those laws contain no prohibition against the acquisition of stock or other share capital or bonds or other evidence of indebtedness of two or more corporations engaged in commerce *by an individual* and do not prohibit such acquisition by a *corporation* except "where the effect of such acquisition may be to substantially lessen competition * * * or to restrain * * * commerce or tend to create a monopoly of any line of commerce.[21]

[21] 15 U. S. C. A., Sec. 18, printed in full in Appendix, p. 67, *post*.

To the extent that the provisions of these paragraphs of the judgment preclude the acquisition or holding of securities in conformity with these standards of the anti-trust laws, they are clearly punitive in character and beyond the power of the court, and if the judgment is to contain any provisions with respect to the holding or acquisition of securities, which for the reasons stated we submit it should not, such provisions should surely be changed to harmonize with 15 U. S. C. A., Sec. 18, and such holding and acquisition should be prohibited only when the same would be in violation thereof.

Moreover, in addition the test should be, in so far as the *individuals* are concerned, whether any such acquisition would result in control or tend to result in control of such competing corporation and the prohibition should not extend to the acquisition of securities of a concern which is engaged in a business which is not *primarily* the manufacture and sale of glassware or glass making machinery, thus obviating the wholly unnecessary and unwarranted restraint with respect to the ownership of securities of corporations engaging in the manufacture and sale of glassware or glass making machinery in some inconsequential degree.

The injunction contained in paragraph 33 is in perpetuity and is applicable regardless of whether or not the defendant concerned is at the time a director or officer of or otherwise associated with a company engaged in the glassware business. Appropriate limitations as to time and the continued existence of such association are essential to the validity of any such prohibition.

Injunction against the appellant becoming an officer or director of more than one corporation engaged in the manufacture and sale of glassware or in the manufacture or distribution of glass making machinery[22] is equally un-

[22]Par. 35 of Final Judgment, R. 7676.

warranted and inappropriate for the reasons heretofore pointed out in connection with the provisions of paragraph 33 of the judgment. Interlocking directors are only forbidden by the anti-trust laws in corporations which by virtue of business and location are competitors so that elimination of competition between them would constitute a violation of the anti-trust laws.[23] There is no competition between companies engaged in the manufacture of glassware and those engaged in the manufacture of glass making machinery. Hence if relief of this character is to be granted it must not exceed that reasonably necessary to accomplish the stated objective, and as in the case of paragraph 33, the prohibition should be limited to appellant being an officer or director of more than one concern engaged primarily in a business (either glass making machinery or glassware) which is in competition with the business in which the particular corporation of which he is already an officer or director is engaged at said time.

Paragraph 36 of Judgment

Paragraph (B) of this paragraph prohibits both the corporate and individual defendants while engaging *either* in the manufacture and sale of glassware *or* in the manufacture or distribution of glass making machinery, or both, from acquiring or holding any of the assets or stock or bonds or other evidences of indebtedness of any other corporation, firm or individual so engaged.

Here again this provision of the judgment exceeds the standards set up in the anti-trust laws themselves. In the first place, there is no provision in the statutes against the acquisition of assets of competitors so long as the effect of

[23] 15 U. S. C. A., Sec. 19, printed in full in Appendix, p. 69, *post*.

such acquisition is not to restrain trade or commerce or to monopolize or attempt to monopolize the same.[24] This provision proceeds on the basis that such acquisition is *per se* unlawful, irrespective of whether or not it violates the anti-trust laws.

With respect to the acquisition of stock, the anti-trust laws contain no provision as to an individual and makes such acquisition unlawful as to a corporation *only* "where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."[25]

It is submitted that these provisions of the judgment are also necessarily punitive in character and should have been so limited by the court below as that at most their prohibitions would not extend beyond those contained in the above sections of the anti-trust laws.

Other Provisions of the Judgment

The judgment further perpetually enjoins appellant *from ever engaging in the distribution of glass making machinery* except upon certain conditions, *i.e.*, "by an outright sale for cash" or on not more than two years' credit (Par. 21); *unless Hartford (over whom appellant has no control)* shall offer to sell each present lessee all Hartford machinery now being used by such lessee "at a reasonable price" taking into consideration license fees heretofore paid, price to be fixed by the court in event of dispute (Par. 22); must offer to sell such machinery to all comers at reasonable and equal prices and upon the same terms and conditions (Par. 23) and without discrimination in

[24] 15 U. S. C. A., Secs. 1 and 2.
[25] 15 U. S. C. A., Sec. 18.

filling such orders (Par. 25). Appellant has *never* engaged in either the manufacture or distribution of machinery used in the manufacture of glassware. Hence by no possibility could there be any presently existing or past acts, conduct or practices on his part in this regard which would justify his inclusion among those defendants against whom the above injunctive restraints are made applicable. By parity of reasoning there could by no possibility be any reasonable anticipation that he would either employ such prohibited practices or devices in the future or that he would engage in such business in any manner violative of the anti-trust laws. Hence such paragraphs are entirely unwarranted and improper as to appellant and his name should be deleted from paragraphs 21, 22, 23 and 25 of the judgment.

But other prohibitions and restraints equally "unlike and unrelated to" and "disassociated from" the single violation which he was found to have committed, are made applicable to appellant. He is perpetually enjoined from ever engaging either in the distribution of glass making machinery (which he has never engaged in) *or in the distribution of glassware* (which he has engaged in for more than 50 years) unless he agrees to license, royalty free, all applicants under any patents or patent applications, now owned by him relating to glass making machinery (he has none and never has had any) and unless he agrees to license all applicants at a reasonable royalty (to be fixed by the court in case of dispute) under all patents hereafter granted on future patent applications owned or controlled by him and to furnish all drawings and patterns with respect to the above (Par. 24). Appellant is enjoined from suing for infringement of any such patents now owned or issued on pending applications (he has neither) and from suing with respect to glass making machinery owned by him (there is

none) or from suing to collect royalties, etc., under such patents now owned or hereafter issued on pending applications (he has no such patents (Par. 26). He is perpetually prohibited from employing various usual and standard practices and procedures with respect to obtaining such patents in the future or protecting against infringement thereof or from inserting various usual and standard provisions in any licenses thereunder (Par. 29) and from acquiring in the future any such patent rights other than non-exclusive licenses (Pars. 51 and 52). Appellant has not only never engaged in the manufacture or distribution of glass making machinery but he does not now and never has owned any patents or patent applications in any wise relating thereto, and he has never at any time licensed others thereunder. Hence there is no possible basis in the record for the inclusion against him personally of any of the restraints contained in the foregoing paragraphs of the judgment either as to past or anticipated acts, conduct or practices violative of the anti-trust laws. Consequently, his name should be deleted from paragraphs 24, 26, 29, 51, 53 and 54 thereof. Nor is it any answer to say that if he does not now own any such patents or patent applications he is not harmed by having such restraints applicable to him. Not only do these restraints apply to the *future* as well as the past, but such an argument completely ignores the mandatory principles to be followed in framing such a judgment as laid down by the anti-trust laws and the decisions of this court discussed *supra*.

Morever, the complete lack of any basis in the record for the imposition of any of these restraints as against appellant makes the more manifest the egregious error of the court below in refusing to dismiss him and the imperative necessity that this court rectify such error.

CONCLUSION

While we have regarded it as our duty to present our views as to the character of the relief granted by the court below, we believe it will be unnecessary for this court to consider the details of the judgment as they affect the Appellant Collins for the reason that as shown in Points 1 and 2 of this brief the government has not presented either by pleading or evidence any claims which justify any judgment as against him.

This case involved twelve corporate defendants and over a hundred associated individual defendants, a complaint of a hundred pages in length referring to literally scores of transactions covering a period of almost half a century, each of which was put in issue consuming one hundred and twelve trial days, and involving over three thousand exhibits and over twelve thousand pages of record, 628 Findings of Fact and 89 Conclusions of Law. In such a case, as this court well knows, more often than not the particular facts and circumstances of the individual defendant are completely lost sight of in the wake of the larger and more complex issues relating to the principal corporate defendants, with the result that such individual defendant does not receive an adequate separate consideration of his defenses and the facts relating to his particular position.[26] Such, we submit, is the only possible explanation for the action of the court below in holding Appellant Collins to be an "individual defendant(s) associated with Hartford-Empire Company" and through such company to have become connected with and to have participated in the asserted conspiracy, etc., notwithstanding that his only con-

[26] See opinion of Judge Stone in *United States vs. Standard Oil Company*, 23 Fed. Supp. 937, 939 (W. D. Wis., 1938), affirmed 310 U. S. 150, in granting a new trial to *individual* officers and directors of corporate defendants.

nection within two years prior to the filing of the complaint was as a small minority stockholder. In the case of an ordinary injunction the failure to receive proper and adequate consideration would doubtless be of less importance. But in a case such as this, the effect of the final judgment is not only to place such individual's whole conduct, personal and business, "at the peril of a summons for contempt" but also to establish "*prima facie* evidence" of violation of law in any suit brought for treble damages,[27] thus exposing such individual defendant to the dangers of further litigation and a money judgment on the basis of a final judgment rendered without a careful, adequate, independent consideration of the particular facts and circumstances upon which the claim of such individual's connection with and participation in the asserted conspiracy is rested. In such case it becomes imperative that this court rectify the error of the court below and thus make certain that the individual defendant shall have his day in court. Such consideration can, we believe, have but one result—the dismissal of this appellant.

[27] 15 U. S. C. A., Sec. 16.

Respectfully submitted,

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Toledo, Ohio,
September 30, 1943.

APPENDIX

Section 1, Sherman Act (15 U. S. C. A., Sec. 1):

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45, as amended and supplemented, of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, §1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693.

Section 2, Sherman Act (15 U. S. C. A., Sec. 2):

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, §2, 26 Stat. 209.

Section 4 Sherman Act (15 U. S. C. A., Sec. 4):

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1-7 and 15 of this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. July 2, 1890, c. 647, §4, 26 Stat. 209; Mar. 3, 1911, c. 231, §291, 36 Stat. 1167.

Section 3 Clayton Act (15 U. S. C. A., Sec. 14):

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States or fix a price charged

therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. Oct. 15, 1914, c. 323, §3, 38 Stat. 731.

15 U. S. C. A., Sec. 24:

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court. Oct. 15, 1914, c. 323, §14, 38 Stat. 736.

28 U. S. C. A., Sec. 383:

Every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same. (Oct. 15, 1914, c. 323, §19, 38 Stat. 738.)

15 U. S. C. A., Sec. 18:

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation

engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying-on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything contained in sections 12, 13, 14-21, 22-27 of this title be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or

an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right legally acquired on or before October 15, 1914: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything theretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided. Oct. 15, 1914, c. 323, §7, 38 Stat. 731.

15 U. S. C. A., Sec. 19:

No private banker or director, officer, or employee of any member bank of the Federal Reserve System or any branch thereof shall be at the same time a director, officer, or employee of any other bank, banking association, savings bank, or trust company organized under the National Bank Act or organized under the laws of any State or of the District of Columbia, or any branch thereof, except that the Board of Governors of the Federal Reserve System may by regulation permit such service as a director, officer, or employee of not more than one other such institution or branch thereof; but the foregoing prohibition shall not apply in the case of any one or more of the following or any branch thereof:

(1) A bank, banking association, savings bank, or trust company, more than 90 per centum of the stock of which is owned directly or indirectly by the United States or by any corporation of which the United States directly or indirectly owns more than 90 per centum of the stock.

(2) A bank, banking association, savings bank, or trust company which has been placed formally in liquidation or which is in the hands of a receiver, conservator, or other official exercising similar functions.

(3) A corporation, principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States which has entered into an agreement with the Board of Governors of the Federal Reserve System pursuant to sections 601-604 of Title 12.

(4) A bank, banking association, savings bank, or trust company, more than 50 per centum of the common stock of which is owned directly or indirectly by persons who own directly or indirectly more than 50 per centum of the common stock of such member bank.

(5) A bank, banking association, savings bank, or trust company not located and having no branch in the same city, town, or village as that in which such member bank or any branch thereof is located, or in any city, town, or village contiguous or adjacent thereto.

(6) A bank, banking association, savings bank, or trust company not engaged in a class or classes of business in which such member bank is engaged.

(7) A mutual savings bank having no capital stock.

Until February 1, 1939, nothing in this section shall prohibit any director, officer, or employee of any member bank of the Federal Reserve System, or any branch thereof, who is lawfully serving at the same time as a private banker or as a director, officer, or employee of any other bank, banking association, savings bank, or trust company, or any branch thereof, on August 23, 1935, from continuing such service.

The Board of Governors of the Federal Reserve System is authorized and directed to enforce compliance with this section, and to prescribe such rules and regulations as it deems necessary for that purpose.

No person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to chapters 1 and 8 of Title 49, if such corporations are

or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of sections 12, 13, 14-21 and 22-27 of this title it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of sections 12, 13, 14-21, 22-27 of this title is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment. Oct. 15, 1914, c. 323, §8, 38 Stat. 732; May 15, 1916, c. 120, 39 Stat. 121; May 26, 1920, c. 206, 41 Stat. 626; Mar. 9, 1928, c. 165, 45 Stat. 253; Mar. 2, 1929, c. 581, 45 Stat. 1536; Aug. 23, 1935, c. 614, §329, 49 Stat. 717.